

STATE OF MARYLAND


ROBERT L. EHRLICH, JR., GOVERNOR | MICHAEL S. STEELE, LT. GOVERNOR



**GOVERNOR'S
COMMISSION ON
MINORITY
BUSINESS
ENTERPRISE
REFORM
REPORT**

LEVELING THE PLAYING FIELD



The background features a large, light grey semi-circle on the right side, partially overlapping a solid orange shape on the left. The orange shape has a curved edge that follows the inner curve of the semi-circle. In the top right corner, there is a small grey triangle. At the bottom, there is a horizontal bar with a grey top section and an orange bottom section.

"In a real sense all life is interrelated. All men are caught in an inescapable network of mutuality, attired in a single garment of destiny. Whatever affects one directly affects all indirectly. I can never be what I ought to be until you are what you ought to be, and you can never be what you ought to be until I am what I ought to be. This is the interrelated structure of reality.

Rev. Martin Luther King, Jr.

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HOW THIS REPORT IS ORGANIZED

The Governor's Commission on Minority Business Enterprise Reform's report ("the Report") assumes the reader has at least a cursory knowledge about Maryland's Minority Business Enterprise Program ("the Program") and the climate that precipitated the formation of the Governor's Commission on Minority Business Reform ("the Commission"). For readers without this familiarity, it is suggested that particular attention be paid to the Overview and to the background material contained in Volume II. To give an idea about what this report contains, a breakdown of each of the six sections of the report contained in Volume I is provided.

Part I. Message from the Chairman

Commission Chair, Lieutenant Governor Michael S. Steele, ("the Chairman"), provides his perspective on the program, and the work of the Commission.

Part II. About the Commissioners

Meet the Commissioners who were appointed to serve on the Commission. See their pictures and read their short biographies. Also, find out the names and affiliations of the members who served on the Commission's six committees.

Part III. Executive Summary

This section provides a summary of the material contained in the rest of the Report.

Part IV. Overview

Read this section to find out information about the state's current Program. Find out what problems are inherent to the current Program and why the Program needs radical change. This part also contains information about how the Commission accomplished its business.

Part V. Commission Recommendations

The Commission's recommendations are broken down into the five areas they studied: strategies to strengthen the Governor's Office of Minority Affairs (GOMA), business development, procurement and compliance, access to capital and credit and certification. Also provided are the returns on investment (ROI)/benefits of each of the Commission's recommendations, as well as the risks of taking no action.

Part VI. Implementation of Recommendations

This section provides listings of all of the Commission's recommendations and suggestions about how each should be implemented. It shows which recommendations might require Executive Orders, Legislation, or Management Initiatives.

Volume II

Volume II contains documents that comprise background material for the Commission Report. Specifically, Volume II contains the following documents:

- A. GOMA Responsibilities
- B. MBE Program Statutes
- C. Audit Report
- D. Disparity Study
- E. Grand Jury Report
- F. Written Testimony from Hearing Participants
- G. Newspaper Articles

This report assumes the reader has at least a cursory knowledge about Maryland's Minority Business Enterprise Program and the climate that precipitated the Commission's formation.

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- Governor Robert L. Ehrlich, Jr.

"..we have to stop treating Maryland's Minority Business Enterprise Program as a social program and deploy it as a business practice."

Press Conference – Governor's Commission on Minority Business Enterprise Reform
(June, 2003)

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I. MESSAGE FROM THE CHAIRMAN

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Message From the Chairman

Once implemented, the recommendations will create an environment in Maryland that will empower minority-owned businesses by increasing their access to markets, capital, and business opportunities.



Michael S. Steele, Lt. Governor

Lt. Governor Michael S. Steele is the first African American ever elected to a statewide office in the history of Maryland. Governor Robert L. Ehrlich, Jr. appointed him Chair of the Commission June, 2003.

The strength of the U.S. economy owes much to its entrepreneurs, those visionaries who take risks and develop businesses capable of driving growth into the future. The entrepreneurial spirit, the drive to start businesses, is evident in all segments of the U.S. population, and increasingly so in Maryland's minority business community.

According to the most recent available census data, 82,000 minority-owned and 112,000 women-owned businesses are operating in Maryland. Despite this high level of entrepreneurial spirit in the minority business community, the entrepreneurial success rate is lagging—minority-owned firms are failing to develop into larger businesses.

The December 2003 issue of *Fortune Small Business* stated: " Even during the worst of the recent recession, entrepreneurs launched about six million new businesses a year, a number that has stayed consistent over the past decade. The number of firms launched by minorities has been growing fast, up 17 percent a year, according to the Milken Institute. A recent study by the Ewing Marion Kauffman Foundation, which studies entrepreneurship, found that African Americans are 50 percent more likely to start a business than whites. Latinos are 20 percent more likely".

The dynamic growth of Maryland's minority businesses cannot be ignored, doing so will jeopardize Maryland's economy for years to come. In recognition of these factors and the many obstacles faced by minority businesses, Governor Robert L. Ehrlich, Jr. signed an executive order creating the Commission and made it one of the Ehrlich-Steele's Administration's ("the Administration") primary initiatives.

The Commission was created to produce a plan of action to overhaul the Program. Once implemented, the recommendations will create an environment in Maryland that will empower minority-owned businesses by increasing their access to markets, capital, and business opportunities.

The Commission's recommendations are not without controversy. As agents of change, we felt it necessary to produce a product free from status quo complacency. These recommendations reflect the input of some of the best business minds in the State. They also represent the culmination of many hours of meetings, spirited debates, research, and public hearings around the State. We gathered testimony from more than 200 businesspersons who spoke of tangled bureaucracies, abuse in the bidding process, issues with certification, and the lack of opportunities with the State. Dominant in this plan are those areas of certification, access to capital, business development, procurement/compliance, legislation, and re-engineering of GOMA that ensure there is a "one-stop shop" in Maryland for small and minority businesses.

To all of the Commissioners, committee members and taskforce members, we are creat-

ing history with your commitment, drive and dedication to this task.

The Commission was given a difficult challenge. Sustaining historically under-utilized businesses has been an issue in Maryland for many years.

The Administration knows that Maryland's minority business enterprises ("MBEs") are a driving force behind the State's economic growth and will be a major player in the U.S. economy in the 21st century as a transition to a "minority" emerges as a new "majority".

The Administration intends to end the façade of statistical success that for many years concealed the true facts about the Program. This report is a culmination of our activity, and it is a promising beginning for entrepreneurs, risk-takers and all of those who will have a hand in creating legacy wealth for the future.

December 2003

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II. ABOUT THE COMMISSIONERS

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About the Commissioners

Seventeen Commissioners were appointed by Governor Ehrlich representing businesses, advocacy groups and legislators.



Commission Chair, Lt. Governor Michael S. Steele, serves as a partner and advisor to Governor Robert L. Ehrlich, Jr. His top priorities include reforming the state's Minority Business Enterprise Program, improving the quality of Maryland's public education system, expanding economic development in the state and fostering cooperation between government and faith-based organizations to help those in need.

As a former international business lawyer at Cleary, Gottlieb, Steen & Hamilton, Mr. Steele specialized in sophisticated financial transactions on behalf of Wall Street underwriters. Mr. Steele worked in Cleary's Tokyo office in the area of major product liability litigation and in the London office representing clients in the initial public offering of stock on the London Stock exchange. Mr. Steele earned his bachelor's degree in International Relations from Johns Hopkins University in 1981 and his law degree from Georgetown University Law Center in 1991. Since taking office, Lt. Governor Steele has received several awards for his outstanding leadership and valuable contributions to Maryland. They include the African American Chamber of Commerce of Montgomery County Outstanding Speaker award, NAACP Meritorious Achievement award, the William and Victorine Q Adams Leadership award, Knights of Columbus Maryland State Council Citizen of the Year award, Alpha Kappa Alpha Spirit Award, and the Prince George's County Board of Trade Citizen of the Year Award.



Commission Vice-Chair, Shelonda Stokes, is President and CEO of greiBO media, a multi-media development and production company. She has received many awards for her outstanding accomplishments in business and community development. She received her B.S. in Engineering from Morgan State University.



Commissioner Luis Borunda is founder and President of The Signman, Inc. The Signman provides marketing signage, wide format digital printing and trade show displays. He is the past President of the Baltimore Hispanic Chamber of Commerce and has won numerous business-related awards. He received his B.A. in Political Science, Ethnic Studies and History from New Mexico Highlands University.

Six Commission Committees:

1. **GOMA Strategy**
2. **Business Development**
3. **Procurement & Compliance**
4. **Access to Capital & Credit**
5. **Certification**
6. **Legislation**



Commissioner Sharon Bradford is President of B&B Lighting Supply Inc., a company with ten employees and annual sales of \$1 million. Her company has serviced more than a thousand customers throughout the Baltimore, Washington, Northern Virginia corridor. In 2002 B&B was named "Supplier of the Year" by the Maryland/District of Columbia Minority Development Council.



Commissioner Jill Carter (D-41) represents Baltimore City as a member of the House of Delegates. Prior to her election, Delegate Carter served as City Council Assistant, Assistant Public Defender, Hearing Officer and Assistant City Solicitor. She also has her own legal practice. She received her Law Degree from the University of Baltimore. She is a member of Maryland's Legislative Black Caucus.



Commissioner Robert Clay is President of Robert Clay Construction Contractors. He is legendary for his work as a pioneer and supporter of minority businesses. His company has been awarded many multi-million dollar contracts by state and federal governments.



Commissioner Wayne Curry served Prince George's County for two terms as their first African American County Executive. His career has encompassed government, civic and community affairs, including a stint as General Counsel for Dimensions Health Corporation. He has received numerous awards and honors. He has a national reputation as a minority business champion.

The Commission was created in June, 2003, it sunset in December, 2003



Commissioner Patricia Diamondidis is the president of Highway and Safety Services, Inc. She founded the company in 1987 and now has more than 100 employees. The company, which works in all areas of road construction, is headquartered in Rockville, MD.



Commissioner Patrick Hogan (D-39) represents Montgomery County in the Maryland Senate. He is Vice-Chair of the Senate's Budget and Taxation Committee and serves on other critical senate committees. He is a computer consultant who received his degree in marketing from Indiana University, Indiana, Pennsylvania.



Commissioner Brian Holmes is the Executive Director of the Maryland Highway Contractors, Inc. Prior to accepting this position he spent 13 years as Director of Regulatory Affairs for the Connecticut Construction Industries Association. Holmes is a Vietnam veteran and received his Law Degree from Santa Clara University.



Commissioner Verna Jones (D-44) represents Baltimore City as a member of Maryland's State Senate. Prior to her election she served in the Maryland House of Delegates. She is the founder and President of a small business, Collaborative Solutions. Senator Jones was the 2003 recipient of Maryland's Women for Responsive Government Award. She received a Masters Degree in Public Administration from the City University of New York. She is a member of Maryland's Legislative Black Caucus.

A total of more than 60 people supported this six month effort:



Commissioner Franklin Lee is a partner in the law firm of Shapiro, Sher, Guinot and Sandler. Prior to this position he served as Chief Counsel for the Minority Business Enterprise Legal Defense and Education Fund in Washington D.C. He is nationally recognized for his expertise in MBE litigation. He received his Law Degree from the University of Maryland.



Commissioner Matthew Lee is the founder, President and CEO of Allied Technology Group, Inc. and co-founder and Chairman of Lumenlink Corporation. He is considered to be one of the most successful Korean Americans in the country. He has grown Allied Technology Group to employ more than 500 people nationwide. He was educated in South Korea.



Commissioner Michael Vaughn (D-24) represents Prince George's County as a member of Maryland's House of Delegates. He serves on the Economic Matters Committee and the Joint Technology Oversight Committee. He is also a member of the Bi-County Committee and the Maryland Legislative Black Caucus. Prior to his election, he was an investment advisor and a professional football player.



Commissioner Robert Wallace is the founder, President and CEO of The BiTH Group, Inc., an IT consulting firm. He is also the founder and President of EntreTeach.com, LLC, a multi-media training company. Governor Robert L. Ehrlich, Jr. has appointed him Chair of the Maryland Information Technology Board. He is author of several books for African American entrepreneurs. A graduate of the Amos Tuck School of Business at Dartmouth College, he's received an honorary Doctorate Degree from Sojourner Douglas College.

**Leadership of the
Governor's Office of
Minority Affairs**



Commissioner Garland Williamson is President and CEO of Information Control Systems Corporation. He is President of the President's Roundtable (Baltimore City), and is nationally recognized as a business and community leader. Commissioner Williamson served on the White House Conference of Small Businesses. He received his Master's of Science Degree in Management Science from the Union Institute.



Commissioner Rosetta Kerr Wilson is Director of Government Relations for Comcast Communications, Inc. Prior to joining Comcast, she served as a consultant in the Baltimore Mayor's Office and in several senior positions at Verizon Communications, Inc. She holds a leadership role in many community groups. She received her Law Degree from the University of Maryland.



Commission Executive Director, Sharon R. Pinder, is the Director of GOMA. Director Pinder has more than 20 years of experience as an executive in major corporations and as a minority business entrepreneur. She has received many honors, including being named 2002's "Outstanding Leader of the Year" by Leadership Maryland. She earned an Executive Master's Degree in Technology Management from the University of Maryland. She was recently named the University of Maryland's Distinguished Alumni for 2004.



Herbert Jordan, III, is Deputy Executive Director of GOMA. His career has included years of leadership in the Fortune 500 arena and as a minority entrepreneur. He has extensive experience as a startup specialist with skills in planning, business development and management. He has a degree in Information Systems Management from the University of Maryland.

COMMISSION COMMITTEES

Lt. Governor Michael S. Steele - Chair
Sharon R. Pinder - Executive Director

GOMA Strategy Committee

Chair: Commissioner Shelonda Stokes President
greiBO media

Co-chair: Commissioner Jill Carter Delegate
Maryland House of Delegates

Advisory Team:

*The Commission sought
the experience of state
agency professionals
and businesspersons
around the state.*

Anita Jackson Director, Supplier Diversity
Baltimore Gas and Electric Company
Constellation Energy Group

Larry Wilson Principal-in-Charge, Consulting Service
Thompson, Cobb, Bazilio & Associates, P.C.

Scott Harris President
Washington Cable, Inc.

Agency Assistance Team:

John Petty Assistant Director
GOMA

Vivian Ferebee Director for MBE/EEOC Division
Maryland Department of Public Safety

Ricky Smith Deputy Administrator
Maryland State Highway Administration

Edith Brandt-Terrell Director, Fair Practices
Maryland Port Administration

The Committee met weekly to gather the data needed to shape their recommendations

Procurement/Compliance Committee

Chair:	Commissioner Robert Wallace	President The BiTH Group
Co-chair:	Commissioner Pat Diamondidis	President Highway & Safety Services

Advisory Team:

Commissioner Brian Holmes	Executive Director Maryland Highway Contractors Association
N. Scott Phillips	Program Manager Mentor-Protege Programs IBM Corporation
Hayden Moore	Vice President The Watkins Group
Phillip Martien	President Phillips Way, Inc
Carol Diggs	President/Managing Director Diggs! Executive Search & Business Consulting
Grace Fielder	President G.E. Fielder & Associates

Agency Assistance Team:

Herb Jordan	Deputy Director GOMA
Daniel Coleman	Executive Director, Procurement and Contract Administration Maryland Judiciary
Victoria McCaleb	Assistant Director, MBE Liaison University of Maryland, College Park
Janice Montague	Procurement Analyst Maryland Department of Business and Management
Warren Wright	Procurement Advisor Maryland Board of Public Works
Juanita Singletary	MBE Liaison Morgan State University

Four public hearings were held to hear first-hand from minority business owners.

Business Development Committee

Chair: Commissioner Garland Williamson President
Information Control System Corporation

Co-chair: Commissioner Robert Clay President
Robert Clay, Inc.

Advisory Team:

Commissioner Brian Holmes Executive Director
Maryland Highway Contractors Association

Joseph Aston Consultant

Maria Jackson President and CEO
Maricom Systems

Naomi Howard CEO
ABSS

Reverend Chet Howard Director
Prince George's County Contractors Association

Arthur E. Petersen, Jr. Consultant

Joseph V. Trapani Consultant

Agency Assistance Team:

Normetha D. Goodrum Director, Fair Practices
Maryland Aviation Administration

Everett Ross Director, Maryland Department of Business and Economic
Development

William Johnson Director, Office of Employee & Program Equity
Maryland Department of Human Resources

Penny McCrimmon Small Business Enterprise Manager, Maryland Department
of Transportation

Access to Capital Committee

Chair:	Commissioner Verna Jones	Senator Maryland State Senate
Co-chair:	Commissioner Matthew Lee	President & CEO, Allied Technology Group, Inc.

Advisory Team:

Kyu Han	Consultant
Dexter Lockamy	Consultant
Ackneil Muldrow	President Development Credit Fund
Donna Stevenson	CEO and President, Early Morning Software, Inc.
Stanley Tucker	President Meridian Management Group

Agency Assistance Team:

Margy LaFond	Senior Consultant GOMA
Les Hall	Deputy Assistant Secretary Maryland Department of Business and Ecommerce Development
Brian McLaughlin	Assistant Secretary Maryland Department Of Housing & Community Development
James King	Special Assistant Office of Maryland's Lt. Governor

Certification Committee

Chair:	Commissioner Luis Borunda	President The SignMan, Inc.
Co-chair:	Commissioner Rosetta Kerr Wilson	Director/Gov. & Public Affairs, Comcast Communications, Inc.

Advisory Team:

Commissioner Sharon Bradford

President
B&B Lighting

Avon Evans

President
A&E Consulting

Roger Compos

President & CEO
Minority Business Roundtable

Agency Assistance Team:

Katie Knowlin

Director, Office of Minority Business Enterprise
Maryland Department of Transportation

John Petty

Assistant Director
GOMA

Legislation Committee

Chair: Commissioner Franklin Lee

Partner
Shapiro, Sher Guinot & Sandler

Co-chair: Commissioner Michael Vaughn

Delegate
Maryland House of Delegates

Advisory Team:

Commissioner Brian Holmes

Executive Director
MD Highway Contractors Association

Roberto Allen

Attorney
Saul Ewing LLP

Agency Assistance Team:

Lori Valentine

Legislative Officer
Office of Maryland's Governor

Zachary McDaniels

Deputy Chief of Staff
Office of Maryland's Lt. Governor

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Dr. Earl Richardson	Morgan State University
Dr. Ronald Williams	Prince George's Community College
Dr. Charlene Nunley	Montgomery College
Jim Nooney	University of Maryland Eastern Shore
Eric Hammond	University of Maryland Eastern Shore
Dr. Ronald Forsythe	University of Maryland Eastern Shore
Beverly Hill	Maryland Transportation Authority
Teresa Gee	Maryland Department of General Services
Daviedra Williams	Maryland State Lottery
Carlos Abinador	Maryland Department of Transportation
Catherine Svoboda	Maryland Department of Transportation
Betty Tolson	Maryland Department of Transportation
Sandra Rice	Interpreter for the Hearing Impaired
GreiBO media	
Charm City Caterers	
Early Morning Software	

Other Commission Staff

Shirlette Johnston	Administration - GOMA
Adrennae Speaks	Administration - GOMA
Herman Salley	Special Consultant - GOMA
Regan Hopper	Communications Director, Office of Maryland's Lt. Governor

The public hearings were held at strategically located colleges and universities.

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III.Executive Summary

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EXECUTIVE SUMMARY

The Administration's vision is to create a business environment of inclusion for all Marylanders who want to launch and grow their businesses in Maryland. The value of inclusion allows businesses to flourish by providing equal access to state contractual opportunities, programs that support capacity building, and funding that facilitates the special needs of the minority business community.

The reality is that the state's Program is problematic and plagued with issues detracting from its original purpose: to maximize contracting opportunities for minority businesses. Current laws that have been put in place over the last twenty-five years suffer from lack of application, accountability and enforcement. This is particularly troublesome given all demographic indicators are suggesting a rapidly growing minority business segment.

Maryland's minority business community is comprised of approximately 200,000 women and minority business owners. Survivability and sustainability are the guiding principles for minority businesses that will ensure that our future economy remains viable. However, without a plan of action which creates a supportive environment for the growth of the minority business community, all Marylanders are at risk.

Table 1



1997 Economic Census

Minority- and Women-Owned Businesses In Maryland

Group	All firms		Firms with paid employees			
	Firms (number)	Sales and Receipts (\$1,000)	Firms (number)	Sales and Receipts (\$1,000)	Employees	Payroll (\$1,000)
Universe (All Firms)	400,203	285,924,027	99,761	274,434,271	1,906,435	54,616,809
Total minorities	82,619	11,575,635	14,042	9,892,587	117,256	2,919,945
Black	47,614	3,964,600	4,214	3,180,637	41,755	946,386
Hispanic	11,158	1,567,197	1,793	1,334,552	13,688	398,018
Cuban	869	137,025	216	115,939	1,167	42,039
Mexican Mexican American, Chicano	809	133,146	133	111,088	1,436	32,822
Puerto Rican	847	205,151	151	193,423	1,280	52,658
Spaniard	849	210,358	151	188,530	1,633	51,634
Hispanic Latin American Other Spanish/Hispanic/ Latino	5,777	706,843	926	580,488	7,086	189,365
American Indian and Alaska Natives	2,421	330,961	443	275,900	2,605	64,519
Asian and Pacific Islander	22,164	5,794,335	7,775	5,171,826	60,151	1,531,766
Asian Indian	5,054	2,133,717	1,941	1,975,980	21,041	755,785
Chinese	5,085	1,220,134	1,836	1,092,300	10,634	260,803
Filipino	1,416	131,469	304	110,823	1,150	42,824
Japanese	457	D	48	D	250 to 499	D
Korean	5,831	1,289,999	2,259	1,093,403	10,163	207,992
Vietnamese	2,033	190,353	531	156,635	7,142	74,930
Other Asian	2,102	659,340	788	616,622	6,689	124,411
Hawaiian	132	123,827	41	D	2,500 to 4,999	D
Other Pacific Islander	54	D	28	D	100 to 249	D
Women	115,801	14,657,414	17,355	12,588,190	139,616	3,111,976

In June of 2003, Governor Robert L. Ehrlich, Jr. charged this Commission with the responsibility to among other things, "make recommendations to the Governor for specific and measurable actions that should be taken to reform the current Program."

Survivability and sustainability are the guiding principles for minority businesses that will ensure our future economy remains viable.

The Administration wants accountability and results.

It was decided that without drastic measures were taken, the state's 25-year old Program was indeed in jeopardy.

In June 2003, at a press conference held at the Watkins Group, Governor Ehrlich signed an Executive Order creating the Commission.

The data received through the witnesses and attendees validated early findings of unfair practices, bureaucratic barriers, and a perception of burden in doing business with the State of Maryland.

The Administration wants accountability and results. After careful examination of: (1) the results of the "2002 Performance Audit Report" conducted by the Office of Legislative Audits, (2) the unmet recommendations from the "2001 Utilization of Minority Business Enterprises by the State of Maryland Report", (3) the untouched recommendations from the "1991 Grand Jury Special Report Concerning the Maryland Minority Business Enterprise Program", (4) the 2003 findings of the "Taskforce on Minority Business Reform", and (5) the threat of possible court challenges to Maryland's minority business program, it was decided that without drastic measures, the state's 25-year old Program was, indeed, in jeopardy.

In order to take a proactive stance in resolving the problems, on June 12, 2003, Governor Robert L. Ehrlich, Jr. signed Executive Order 01.01.2003.16 creating the Commission. Given that the Commission is one of the highest priorities of the Administration, in an unprecedented move, Governor Ehrlich requested that Lt. Governor Michael S. Steele personally provide leadership as its chairman. Sixteen other individuals representing businesses, advocacy groups and legislators from across the state were appointed by the Governor to be the state's agents of change.

Methodology

The Commission used a "business life-cycle" approach in its deliberations. The "business life-cycle" consists of four phases: initiation, data gathering and analysis, development and delivery, and implementation. To accomplish the Commission's objectives, the activities of the Commission were executed in concurrent phases:

- **Initiation Phase**

Full commission meetings were held twice a month. The primary objectives of the meetings were to: (1) foster information exchanges with the Commissioners and the general public; (2) facilitate discussions regarding the status of committees and activities; and, (3) allow for project management of the Commission.

A Speakers Series was created to provide the Commissioners with industry related information and the ability to interface directly with subject matter experts.

- **Data Gathering and Analysis Phase**

The critical path items for the Commission were committee designation and data. The data gathering and analysis phase was crucial to the Commission deliverables. Commissioners led the six committees that are discussed throughout this report. Several MBE and procurement professionals from state agencies, as well as other businesspersons, were recruited to participate as committee members. Committees met on average of once a week and were required to submit an interim report of their findings in November 2003. Each committee received reports and data from industry sources to assist with this phase.

To capture the most pertinent data existing on this topic, four public hearings were held across the State to receive input from the MBE community itself. The Commissioners received written and oral testimonies from over 200 people and through the hearings interfaced with approximately 800 people. The data received through the witnesses and attendees validated early findings of unfair practices, bureaucratic barriers, and a perception of burden in doing business with the State of Maryland.

- **Development and Delivery Phase**

There were two milestone deliverables for reporting. The Interim Report was

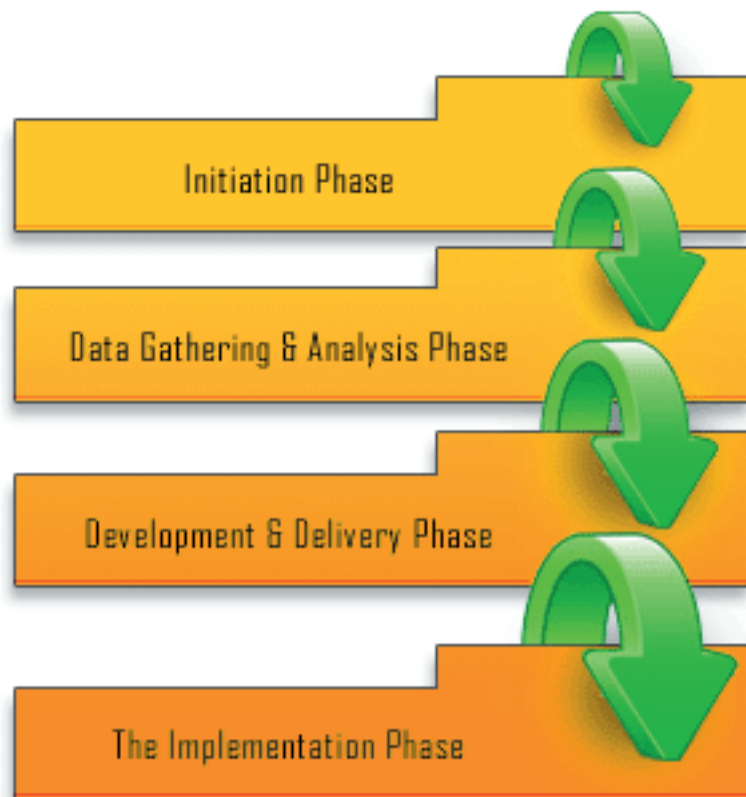
a discussion document providing a framework to capture information such as issues explored and ignored, review of current policy, process and legislation.

The Interim Report was used as a tool to identify key recommendations for the final report. The tool allowed the Commissioners to prioritize and make decisions about how the recommendations were developed. The final report is a culmination of the interim report, public hearings and many hours of deliberations.

- **The Implementation Phase**

The recommendations will be introduced using several vehicles: legislation, executive order, and state agency actions. After review and approval by the Governor, the implementation process will be initiated. This process is outside of the scope of this Commission and will be directed by GOMA.

Figure 1: Commission Life-Cycle



The Commission concentrated on those areas it believed would have the greatest impact on the empowerment and development of minority business.

Summary of Recommendations

The Commission concentrated on those areas it believed would have the greatest impact on the empowerment and development of minority business. The Commissioners focused on six major areas:

The recommendations in this area address the need to strengthen GOMA by providing it with the resources and power needed to carry out its mandate.

1. GOMA Strategy

GOMA is the office statutorily charged with ensuring the success of the Program. The recommendations in this area address the need to strengthen GOMA by providing it with the resources and power needed to carry out its mandate. Recommendations are also included to consolidate services provided by other state agencies into the GOMA structure to eliminate redundancies and provide statewide efficiencies. The Commission considers these recommendations to be the foundation upon which all their other recommendations rest.

2. Business Development

The recommendations for this area fall into four topics: (1) establishing an Internet portal, managed by GOMA, to provide a “one-stop shop” for small and minority businesses; (2) enforcing the existing MBE law; (3) making changes to the procurement system; and (4) providing more support for business development and growth. These recommendations will help build the capacity needed for small and minority businesses to grow. Included in this area are such recommendations as having the State follow the federal government model by providing contracting opportunities specifically targeted to small and minority businesses, and implementing a statewide mentor-protégé program. Additional recommendations are included to ensure that state officials are held accountable for meeting their agency’s MBE goals. Finally, recommendations for changes in the procurement system would eliminate the State’s practice of contract bundling.

3. Procurement and Compliance

Based on the response to a survey conducted at the public hearings, MBEs identified obtaining state contracts as their most pressing problem. A resourced and empowered GOMA can address the heart of the problems with the Program including:

- Putting tools and training in place to enable ALL state agencies to monitor state contracts;
- Focusing state agency and GOMA attention on payments to MBEs;
- Accurately measuring the performance of the Program using race neutral measures—no more made up numbers;
- Enforcing new and existing sanctions; and
- Ending subcontractor abuse.

This all adds up to accountability and, just as important, a system of monitoring and compliance that works. The Commission found, generally, the existing MBE law is adequate for addressing the bulk of the procurement compliance problems. The challenge is to find creative ways to cost effectively address monitoring, accountability, compliance and enforcement of existing laws and regulations.

As the Commission looked at procurement best practices around the State, it saw a significant correlation between staffing, executive leadership and the success of an agency’s MBE program. It also noted that applying technology would dramatically reduce the cost of implementing these changes. Software systems would allow GOMA and existing state agency staff to focus on addressing exceptions as opposed to the current labor-intensive approach of looking for exceptions.

Specific Commission recommendations to accomplish these changes include: establishing a unique I.D. for each contractor, a statewide MBE operations manual, having centralized procurements in an enhanced eMaryland Marketplace, including MBE training in procurement training, naming MBEs as part of the bidding package

The Commission found, generally, the existing MBE law is adequate for addressing the bulk of the procurement compliance problems. The challenge is to find creative ways to cost effectively address monitoring, accountability, compliance and enforcement of existing law and regulations.

(eliminating the 10-day rule), enforcing prompt payment, enforcing sanctions, tracking complaints, and putting policy in place to eliminate discrimination from the commercial market.

4. Access to Capital and Credit

Stepping outside the Program, the Commission found that the area of next greatest concern for MBEs (based on the survey) is access to capital. Three primary problems exist: not enough money available, the type of money available and continued discrimination in commercial lending. In Maryland, as in the rest of the United States, minority business owners generally have a smaller fraction of the net worth or asset base than non-minority business owners. As a result, they do not have the money to start capital-intensive businesses or sustain existing businesses through the tough times that always come. They need patient or risk capital to survive. This is not the kind of money commercial banks provide. The Commission's recommendations provide solutions to the access to capital challenges minority businesses face including: leveraging the State's discretionary spending, pension fund and commercial banking relationships (expanded linked deposit program) to benefit minority access to capital, encouraging local financial institutions to increase MBE's access to capital, further funding the Maryland Department of Housing and Community Development's patient capital fund through taxable bond issuance, increasing technical assistance available to minority business by increasing funding of Small Business Development Centers (SBDCs), monitoring commercial and state lending to minorities, developing minority participation goals for existing State loan programs, earmarking gaming revenues to fund minority loan funds, starting a Certified Capital company (CAPCO), increasing sources for micro-enterprise lending, and consolidating all technical support programs, with the exclusion of the program operated by the SBDC's, thus creating a one-stop training shop for minority business.

5. Certification

The recommendations contained in this section are based on the fact that MBEs do not generally derive any benefit from being certified. Therefore, the recommendations are designed to make the certification process more attractive by providing incentives for certification, as well as developing a process, with GOMA oversight, which is more responsive to the needs of the MBEs.

Conclusion

The biggest barriers to the success of the current Program are the lack of accountability, uniformity and consistency demonstrated in executing the Program. Training is also critical for procurement professionals and those responsible for the monitoring and the compliance of the Program.

The success of the Program will be measured by:

- demonstrating that the 25 percent goal for MBE participation in state contracts is the minimum and not the maximum level the State can achieve;
- moving minority-owned businesses into business areas and opportunities where they have been historically under-utilized;
- removing the barriers of entry by centralizing an infrastructure that is customer focused and supports the growth of minority businesses; and

Three primary problems exist: not enough money available, the type of money available and continued discrimination in commercial lending.

The biggest barriers to the success of the current Program are the lack of accountability, uniformity and consistency demonstrated in executing the Program.

- demonstrating the services the State provides can produce, within a reasonable period of time, self-sustaining minority owned businesses, capable of remaining in business without the continuous need for remedial assistance;

The ultimate goal is to eliminate the need for the Program. This can only be achieved when under-utilization is not a consequence of discrimination.

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IV. Overview

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OVERVIEW

The Program has consistently been recognized as a model for the nation to emulate. However, the results of the 2002 program audit belie such adulation. Over time the State has developed its own unique character that ultimately influences how it does business. The resulting “culture” has led to the State adopting “policies and practices” designed to enhance the efficiency and productivity of the State but have resulted in hindering and preventing compliance with the goals of the Program.

The impact of this culture on MBEs and on the achievement of MBE goals has led us to the current dysfunctional environment characterized by the following:

- MBEs and small business owners are frequently frustrated in their efforts to do business with state agencies. The responsibilities for procurement information dissemination among these agencies are extremely fragmented. Vendors of products and services that are purchased by more than one agency must spend their scarce resources going “door to door” in search of contracting opportunities, encountering varying levels of cooperation and assistance from procurement officers. While all successful businesses must aggressively and proactively market their products and services, the current environment discourages many MBEs from doing business with the State.

- There are no tangible benefits and incentives for MBEs to participate in the Program beyond the attainment of certification. Sometime, MBEs are incorrectly told that certification restricts their status to that of a subcontractor for purposes of Program compliance.

Many agencies do not realize that MBE prime contractors count towards meeting their MBE participation goals. Therefore, MBE participation as prime contractors is effectively discouraged.

- There is no accountability for the Program. There are no incentives in place for state officials or prime contractors to comply with the MBE goal. And, although the law provides for sanctions for prime contractors who do not comply, these sanctions are not enforced.

The ultimate success of the Program requires that these issues be addressed. Cultural changes in any organization require a top-down approach. Therefore, it is essential that the Administration, agency chief executives and legislators demonstrate and sustain their commitment to the success of the Program. This includes incorporating goal compliance as a key component of executive performance evaluations and as a priority in agency Managing for Results plans. The State must lead by example.

Without a strong, clearly understood, uniform management structure in place to govern the Program at all state agencies, Program performance will be mediocre and inconsistent at best. A system for measuring, encouraging and enforcing accountability for compliance with the law has been absent since the inception of the Program more than 25 years ago.

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"Without a doubt, the best way for us to accumulate wealth quickly and increase the circulation of dollars within our community is through rapid formation of businesses within our community."

**Source: Robert Wallace:
Black Wealth Your
Road to Small Business
Success**

The Commission believes that the spirit and the letter of the law defining the Program are sound as written. However, our collective experience as MBE vendors and prime contractors, along with input from managers of the Program, shows that the way this law is implemented impedes the ability of MBEs to fully develop their businesses and create wealth.

The purpose of the Report is to present our findings, conclusions and recommendations with respect to the State's efforts to promote the development of minority businesses.

The Report is primarily designed to recommend solutions that will solve problems. It was, however, virtually impossible for the Commission to analyze every known problem that prohibits equitable participation by minority business persons. Thus, the Commission concentrated on those areas it believes to have the greatest ROI for the development of minority businesses.

This Report provides recommendations to alert the Governor to those areas of concern that, left unattended, will place the future of the State's economy at risk. The Commission requests that the recommendations be used as solutions for economic development and asks that full consideration for implementation be given expeditiously.

A. The Vision

The vision and mission of the Program must be re-engineered to support a cultural change in the way the State manages its MBE practices. The Commission believes the ultimate goal of the Program is building wealth in the minority communities to the point where they are self-sufficient. The Program should not be considered an end unto itself. Instead, it should be viewed as a means to an end. In fact, if GOMA's mission is properly reinforced and administered, the end result will be that the need for GOMA will cease to exist.

Achieving this vision of legacy wealth begins with a level playing field for all citizens in the State of Maryland. Leveling the playing field creates an environment of sustainable change for minority businesses. If the playing field is leveled, distinctions in race, gender and size will not matter.

The roadmap to the vision begins with a seamless customer-friendly and focused set of services geared toward minority businesses. The one-stop shop will allow the MBE to navigate through the system of state services. This central repository of information facilitates the integration of services and products, and vastly improves communications. GOMA will have the necessary resources, visibility and clout to ensure compliance with the laws.

When MBEs enter the one-stop shop, information is collected so a customized profile can be created to provide them with better service. For example, MBEs will receive an electronic alert for all procurements they are eligible to bid on from a centralized procurement system. A centralized bidder's database will allow the MBEs to retrieve the information they need to analyze possible business partners and to bid as prime contractors. All of this data, including small business procurement information, will be available via the web. The development of small business procurements and mentor-protégé programs allow small businesses to build the base they need to succeed. Minority businesses will be encouraged to leverage the small business preferential they obtained when they became certified.

A central repository with information on all types of capital and credit will be available. Access to an abundance of patient capital, for example, backed by taxable bonds, will begin to break down barriers to entry and growth. The Department of Community and Housing Development's model is a best practice for the country and it doesn't compete with commercial lending while supporting investment in MBEs.

MBEs and small business owners will have access to the training information they need through a comprehensive program that is centrally administered and monitored. They will benefit from statewide procurement fairs where they can network with other MBEs, small businesses and state procurement officials. MBEs and small businesses will become aware of all outreach efforts and state services via a centrally controlled and sustained public information awareness campaign. Precious state resources will no longer be wasted by multiple state agencies duplicating these services.

To ensure the ongoing success of the program, enforcement elements will be in place which GOMA will monitor. A centralized complaint database will serve as a tool for continuous quality reviews and process improvements.

Additionally, to solve the problems caused by providing MBEs and small businesses with misinformation, the proper resources and budget will be assigned to allow the program to be properly executed. The Program will be equitably and consistently applied through uniform policies and procedures across state agencies. MBE liaisons and other procurement professionals will be trained, and MBE liaisons will be given review authority equal to procurement officers on solicitations and contracts.

Potential prime contractors will be required to enter into binding agreements with their subcontractors before they place a bid for a state contract. They will be required to promptly pay their subcontractors. If they fail to comply with existing law, they will be properly penalized.

The improvements cited above are not all-inclusive. They represent just a sampling of how the Program can be vastly improved through the Commission's recommendations.

The harsh reality is that the road to legacy wealth is filled with obstacles. By implementing these recommendations and reforms today, the Commission is confident MBEs can reach their final destination --one contract at a time.

B. The Evidence and Issues

(Source: May 2002 Milken Report: Maryland Today).

Both nationally and within Maryland, minority-owned small businesses are a fast growing, diverse group of firms. From 1992-1997, the number of minority-owned businesses in the United States grew more than twice as fast as the total number of all U.S. firms.¹ These businesses currently represent almost 12 percent of the country's total number of businesses. Dun and Bradstreet estimates that in the year 2000, minority-owned firms had annual revenues totaling \$1.2 trillion.

Minority-owned firms forge ethnic allegiances in their communities, establishing and developing long-term relationships with vendors and suppliers that also create competitive advantages.² Growing inner-city markets provide profitable opportunities for minority entrepreneurs.³

¹ Milken Institute, "Investing in Emerging Domestic Markets: Issues, Opportunities, and Innovative Alternatives, August 2001.

² Dyer, Linda et al, "Journal of Small Business Management" v. 8 no. 2, April 2000.

³ U.S. Department of Commerce Minority Business Development Agency, October 7, 1999.

By implementing these recommendations and reforms today, the Commission is confident MBEs can reach their final destination --one contract at a time.

Both nationally and within Maryland, minority-owned small businesses are a fast growing, diverse group of firms.

Nonetheless, minority-owned firms face particular challenges. Nationally, minority-owned businesses generally have a lower survival rate and are concentrated in a smaller number of industries than non-minority owned businesses. While minorities start businesses at a higher rate, with the exception of Asian-owned businesses, their survival rate is lower. The national average business survival rate is 47 percent. The Hispanic business survival rate is 44.9 percent while the African American rate is 34.7 percent.⁴ Asians and those classified as “other minority groups” have an above average survival rate of 50.4 percent. According to the U.S. Small Business Administration, the high turnover rate of Hispanic and African American businesses is a consequence of a lack of financial capital.⁵

Table 2

<i>Ethnicity</i>	<i>Survival Rate</i>
<i>National Average</i>	47.0%
<i>African Americans</i>	34.7%
<i>Hispanics</i>	44.9%
<i>Asians and Other Minorities</i>	50.4%

SOURCE: DUN AND BRADSTREET

The distinctions between the broad category, “minority-owned business” and specific minority groups are also informative. The highest concentration of businesses is in Services (42.7 percent), Construction (11.2 percent), and Finance, Insurance, and Real Estate (10.8 percent).⁶ There is evidence that different minority and immigrant groups start businesses in certain industries for reasons relating to their level of access to capital and networks. For example, language barriers limit Korean immigrants’ opportunities in traditional occupations so they tend to start their own businesses. Because of fewer ethnic networks to obtain start-up capital, Korean-owned firms are concentrated in more labor-intensive industries such as grocery and liquor retail, with low capital start-up costs. Iranians, who have more resources and networks available to them, establish businesses in more capital-intensive industries, such as garment manufacturing.⁷

⁴ Based on all businesses with employees that started in or before 1992 and had positive payrolls. U.S. Small Business Administration, “Minorities in Business, 2001.”

⁵ U.S. Small Business Administration Office of Advocacy, “Minorities in Business, 2001.”

⁶ Minorities in Business, U.S. Survey of Minority-owned Business, 2001.

⁷ Bozorgmehr, Mehdi, “Immigrant Entrepreneurship and Business Patterns: A Comparison of Koreans and Iranians in Los Angeles,” The International Migration Review, Fall 2000.

C. November 2002 Legislative Performance Audit Report

"marketplace discrimination makes it harder for MBEs to compete for business from the State and from buyers, either as prime contractors or subcontractors. While prime contractors will use MBEs on public sector projects with MBE requirements, they seldom or never use them on projects without such goals."

In 2002, the Department of Legislative Services, Office of Legislative Audit, conducted a performance audit to determine the adequacy of GOMA's reporting of state agency compliance with Program requirements. It also assessed state agencies' procedures for ensuring Program compliance. During the period covered by their audit (2001), the statewide MBE participation goal for contract awards was 14 percent. The goal was increased to 25 percent for fiscal year 2002.

The audit disclosed that GOMA did not always fulfill its Program oversight responsibilities. For example, GOMA did not ensure the reasonableness of agency reported MBE participation information. The auditor's testing of data reported by state agencies, which accounted for over one-half of the statewide MBE participation, disclosed that 40 percent of the reported MBE activity awarded was not supported. As a result, the reported fiscal year 2001 statewide MBE participation of 19.2 percent was significantly overstated.

GOMA did not obtain actual MBE payment information from state agencies on completed contracts, which is a critical evaluation tool in determining if MBEs are receiving intended work. The auditor's testing of completed contracts indicated that MBEs are participating at a lesser rate than anticipated by the contract awards. The audit also disclosed that state agencies were frequently not complying with the requirements of the Program, such as the requirement to monitor and verify the actual MBE participation and payments.

A copy of the full Audit Report is located in Volume II of this Report.

D. 2001 Utilization of Minority Business Enterprises by the State of Maryland Report (also known as the "Disparity Study")

The Annotated Code of Maryland requires the state to "...initiate a study of the Program to evaluate its continued compliance with the requirements⁸ of the Croson decision and any other subsequent federal or constitutional requirements." This study is required every five years.

In 2000, the National Economic Research Associates (NERA) conducted a "Study of the Utilization of MBEs by the State of Maryland." NERA found that marketplace discrimination makes it harder for MBEs to compete for business from the State and from buyers, either as prime contractors or subcontractors.⁹ While prime contractors will use MBEs on public sector projects with MBE requirements, they seldom or never use them on projects without such goals. The report demonstrated that while 17 percent of contracts were awarded to minority-owned businesses in fiscal year 2000, the market showed that the State of Maryland should be able to award 26.9 percent of their contracts to minority businesses based on the number and type of minority firms who were ready, willing and able to do business in the region.¹⁰

8. Annotated Code of Maryland, State Finance and Procurement Article, Section 14-301, Editors Note. 2001 Replacement Volume.

9. National Economic Research Associates. Prepared for the Maryland Department of Transportation. Utilization of Minority Business Enterprises by the State of Maryland. (January 8, 2001); 175.

10. Ibid .137

The NERA study found both statistical and anecdotal evidence of discrimination against MBEs. The study found evidence that all types of MBEs were under-utilized in all major State of Maryland procurement categories. To assess whether the under-utilization was a consequence of discrimination and whether fewer MBEs would be used if there were not a Program, NERA also analyzed private sector market behavior and surveyed the contracting experiences of MBE and non-MBE firms in the relevant geographic and product markets.

A full copy of the NERA study is located in Volume II of this Report.

E. 1991 Grand Jury Special Report Concerning the Maryland Business Enterprise Program

The 1991 Baltimore City Grand Jury Report issued on the Program and published by the Honorable Joseph H. H. Kaplan, Administrative Judge and the Honorable Roger Brown, Grand Jury Judge, unequivocally supports the goals of the Program.

The 1991 Grand Jury report concerning the Program states, in its Section III Conclusions and Recommendations, the wide ranging problems within the Program could be addressed by creating an independent entity, adequately staffed and funded, to "...assure that state agencies are fully participating in and monitoring the Program."¹¹

A copy of the full Grand Jury report is located in Volume II of this Report.

F. The Public Hearings

The Commission's value was enhanced by its ability to engage a representative sample of minority and women business owners around the State of Maryland. It was important to hear directly from the constituents and to allow the public the opportunity to provide first-hand testimony. By providing a platform for open and honest discussion and feedback, the Commission was able to analyze the input and ensure its inclusion in the final results. The Commission recognizes that the final measurement of success resides in the adoption of its recommendations.

Given its aggressive timeline, the Commission decided to hold public hearings in four strategic areas. The locations of the hearings were chosen based on demographics.

Four venues were selected:

- | | | |
|----------------------------|-------------------|--------------------------------------|
| 1. Eastern Shore | September 4, 2003 | University of Maryland Eastern Shore |
| 2. Baltimore Region | October 22, 2003 | Morgan State University |
| 3. Montgomery County | November 6, 2003 | Montgomery College |
| 4. Princes George's County | November 17, 2003 | Prince George's Community College |

11. Grand Jury for Baltimore City. Joseph H. H. Kaplan and Roger Brown. Special Report Concerning the Maryland Minority Business Enterprise Program, Extended September Term. 1991

The Commission's value was enhanced by its ability to engage a representative sample of minority and women business owners around the State of Maryland.

Table 3 captures, per venue, the number of attendees at each session. It also shows the number of people who signed-up to provide testimony and the actual number that provided oral testimony. At all venues, written testimony was requested in advance. Copies of the written testimony can be found in Volume II of this Report.

Commission Hearing Statistics

Table 3

Venue	Attendees	Registrants	Testimony
Eastern Shore	72	46	30
Baltimore	170	141	48
Montgomery County	195	132	80
Prince George's County	350	240	70
Totals	787	559	228

Registrants were asked, "What are the most pressing problems facing minority businesses today? Please rank in order of importance, with 1 being the most important and 7 being the least important ¹²:

Table 4

Issue	1	2	3	4	5	6	7
Access to capital and credit	225	92	87	44	39	33	0
Minority certification by the state	83	32	47	44	38	74	14
Tools for growing my business	108	55	54	69	50	24	5
Obtaining state contracts	234	64	44	24	32	18	3
Knowing where to get help for my business	128	41	40	49	59	38	4
Marketing	88	49	42	45	48	65	6
Other: Taxes	2	-	-	-	-	-	-
Contract bundling	5	1	-	-	-	-	-
Procurement regulations	3	-	-	-	-	-	-
MD Marketplace	2	-	-	-	-	-	-
Youth entrepreneurship	5	-	-	-	-	-	-
Bonding	1	-	-	-	-	-	-
Access to Markets	1	-	-	-	-	-	-
Net worth requirement	1	-	-	-	-	-	-
Licenses	2	-	-	-	-	-	-
Writing proposals	1	-	-	-	-	-	-
Lack of procurement oversight	2	-	-	-	-	-	-
Lack of mentors	1	-	-	-	-	-	-

¹² Not all registrants ranked each issue; some registrants gave each issue equal ranking, some registrants did not rank issues at all.

An informal survey was taken as part of the registration process at each public hearing. Respondents ranked obtaining state contracts as the most pressing problem facing minority businesses. Access to capital and credit was rated as the second most pressing problem.



Prince George's Community College, November 17, 2003
Source: Office of Maryland's Governor



Morgan State University October 22, 2003
Source: The Baltimore Sun

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V. Summary of Key Topics & Recommendations of the Commission

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GOVERNOR'S OFFICE OF MINORITY AFFAIRS STRATEGY

Introduction

"It's time to level the playing field for minority businesses in Maryland. Most minority business owners do not have the resources to navigate the State's complex certification and procurement procedures. I applaud the Governor's commitment to make changes."

Source: Hayden C. Moore, Security Agency, Baltimore.

GOMA's mission is to facilitate MBE activities by coordinating and promoting government programs aimed at strengthening and preserving the State's 200,000 minority and women owned businesses. GOMA is also responsible for overseeing the work of the state agencies as they plan and implement projects intended to overcome special problems related to MBE participation initiatives. (For a full listing of GOMA's statutory and regulatory responsibilities, see Volume II of this Report.)

Of all the issues discussed by the Commission, the status of GOMA was the cause of greatest concern. The current status of GOMA reflects the current status of the Program. A state organization that has been assigned two people and a budget of less than \$300,000 sends a clear signal to the people it is supposed to serve.

An organization charged with attending to the affairs of and being the voice for one-half of the businesses in Maryland should have more resources and authority. Forty years after the Civil Rights Act was signed, the Program does not function as the business program it needs to become to support almost one-half of Maryland's business community. Both economically and politically the State cannot ignore groups that are quickly becoming the majority of Maryland's population. The choice is clear: either provide the resources GOMA needs to fulfill its statutory and regulatory mandates, or maintain the status quo.

The Commission is equally unanimous and committed to maintaining GOMA as an independent, separate entity. This position is supported by every report that studied this issue.

GOMA needs to be elevated to a department with the same resources, authorities and accountabilities as other agencies. The title of its director needs to be changed to better reflect its new status and expanded role. It should be headed by a Special Secretary.

Tasked with ensuring compliance with the 25 percent contracting goal for individual contracts and with providing services to MBEs, MBE liaisons report to individual state agencies. This creates a conflict of interest since the MBE liaisons are sometimes required to sacrifice Program compliance for the sake of perceived state agency efficiencies. Since each MBE works independently, valuable resources are being expended in duplicative marketing, outreach, training and procurement activities that have not been shown to be effective. Responsibilities and service delivery are so fragmented that ultimately accountability is questionable.

The Department of Human Resources currently houses the Governor's Commissions on Women, Hispanics, Asian-Pacifics and Native Americans. Although the Commission recognizes that the issues raised in these commissions encompass more than business, it believes that the voices for all minority issues should be co-located. This provides for stronger accountability and one clear voice as the State struggles with all of the issues facing its minority populations.

Similarly, since most MBEs are small businesses with needs similar to other small businesses, the Commission believes the function of advocating on behalf of both small and minority businesses should be given greater resources.

GOMA's primary role is to provide oversight of the Program, and function as the inspector general of the Cabinet for compliance with the Program.

Recommendations

1. Make GOMA a department and provide it with the staff and budget allocations needed to meet its statutory responsibilities for Program oversight, compliance, outreach, and the delivery of services.

ROI/Benefit

- Focuses the Program on business promotion and compliance with the law.
- Reinforces that in the State of Maryland commerce is for all residents.
- Promotes the image of Maryland as a business friendly State.
- Strengthens GOMA's cabinet level position, with a Special Secretary reporting to the Governor to help ensure that the state's minority and women owned businesses receive their fair share of state procurement opportunities.
- Eliminates duplication and creates a more efficient and effective Program.
- Raises the level of accountability for the state's minority business participation goals.
- Implements the findings and recommendations of the 1991 Baltimore City Grand Jury Special Report Concerning the Maryland Program, the 2002 legislative audit findings and the 2003 Task Force on Minority Business Reform Report.
- Responds to the findings of the Commission's four recently held public hearings (Witnesses complained of fragmented, insufficient services).
- Eliminates duplication across agencies by creating a one-stop shop approach.

Risk of No Action

- By not changing the current Program management structure and oversight, the Program will continue to deteriorate to a point that it becomes void of value for the state's minority business community.
- MBEs will continue to have an insufficient voice in Government.
- Continued absence of accountability.

2. Ensure the Program comes into and remains in compliance with Maryland's MBE laws and procurement regulations by having MBE liaison officers, as defined in Volume 20 Title 21 State Procurement Regulations, report directly to GOMA.

ROI/Benefit

- Assures that the designated units and agencies of state government are fully participating, monitoring and complying with the requirements of the law in a consistent manner.
- Empowers MBE liaison officers to be advocates for the success of the Program.

Risk of No Action

- Continued fragmentation will exist in implementing the Program.
- Ongoing conflict of interest for MBE liaisons.
- Continued marginal Program management, lack of accountability and ownership by MBE liaisons.

3. Continue the work of the Commission by creating the Governor's Council for Historically Under-utilized Businesses.

The Commission recommends that the Council consist of the Special Secretary of GOMA as chairperson, six minority businesspersons representing major ethnic groups, women and other advocacy groups appointed by the Governor, one legislator appointed by the Maryland House of Delegates, one legislator appointed by the Maryland Senate and ex-officio members to include relevant cabinet secretaries.

ROI/Benefit

- Serves in an advisory capacity to GOMA.
- Ensures a body representing all of the Program participants set the Program direction.

Risk of No Action

No risk.

4. For efficiencies that can be derived, minority commissions (Women, Hispanic, Asian Pacific, etc.) should be moved to GOMA.

ROI/Benefit

- Allows GOMA to fulfill its responsibilities under state regulations. Sections 9-301 through 9-304 address GOMA's current responsibility for enhancing the promotion and employment of minority persons in the State; to research the nature and extent of problems concerning Black males in the areas of employment, health, criminal justice, education; and, to advise the Governor on minority affairs including rights and interest of minorities in their communities.
- Facilitates the Administration's goal of increased awareness of multiculturalism and diversity as a part of minority business reformation.
- Provides each of the commissions with greater access and exposure to state programs and resources.

Risk of No Action

- Fragmented approach to minority affairs.

5. Require GOMA to establish policies and procedures, and provide oversight and guidance to all activities of the Governor's Office of Business Advocacy in the Department of Business and Economic Development and other state agencies and advocates that impact small and minority businesses.

ROI/Benefit

- Provides credibility as an independent state agency whose sole purpose is to improve the viability of small and minority business.
- Reinforces, for state departments and agencies, the importance of promoting participation of minority firms on state contracts.
- Facilitates the administration's goal of increased awareness of multiculturalism and diversity as a part of minority business reformation.

Risk of No Action

- Fragmented approach to minority affairs.

BUSINESS DEVELOPMENT

"State agencies need to realize that minority businesses can be prime contractors and deliver the same quality services as other businesses, on time and within budget. I am hopeful that the work the Commission is doing will create more opportunities for minority companies to be prime contractors."

**Gloria Lawlah Walker,
IT Firm, Prince George's
County**

Introduction

The problem of the under-utilization of minority business is not a minority problem. It is an economic problem shared by all Maryland residents.

The Program is a basic and vital component of Maryland's economic development policy. Maryland cannot achieve nor exceed its goals for economic development, business attraction and retention, job creation and preservation, if it neglects the substantial and increasingly significant proportion of its small business community represented by the 200,000 MBEs located within its borders.

Furthermore, state services which support small and minority businesses are scattered among several state agencies. Individual MBEs often find the information they need by chance, word of mouth, or going door-to-door. Many MBEs that participated in the public hearings complained that they do not know what services are available or where to find the services they do know about. Additionally, redundant services among state agencies waste state resources. The Commission does not think small and minority businesses should waste their scant resources or be disadvantaged because the state services they need are difficult to access. The Commission recommends that GOMA develops an Internet portal to serve as a one-stop shop for small and minority businesses, where information for small and minority businesses can be found.

Another problem with the procurement process that impedes compliance with the law and limits business development is the State's practice of contract bundling. Although bundling many types of services or products into a single contract may be easier for state agencies, this practice effectively ensures that few small businesses or MBEs can be prime contractors. The instances where contract bundling is necessary should be few and far between, yet at each of the four hearings, the Commission heard testimony from many business people who have been frustrated in their attempts to bid on and win state contracts because of this practice.

The Commission is concerned about the lack of resources and authority in GOMA. GOMA is statutorily mandated to ensure compliance with the MBE law, but has neither the resources nor clout to fulfill its mission. Additionally, individual state officials are not held responsible for failure to comply with the Program. The State cannot hope to attain compliance with the law unless the performance appraisals of all impacted state officials, from cabinet secretaries on down, are affected by their success or failure in this area.

The Commission found no support mechanisms in place for MBE's seeking to build the capacity of their business in order to become more successful, competitive, and consistently profitable enterprises. The federal government and many other government entities provide small business procurements that are targeted only to minority and small businesses; the State currently does not provide these opportunities.

Additionally, the law caps an MBE owner's personal net worth at \$750,000. There is no information supporting a personal net worth cap. Discrimination is not determined by the personal net worth of an individual business owner. This cap amount has been arbitrarily applied and should not be a determining factor of whether or not a businessperson is disadvantaged.

Finally, a mentor-protégé type of program is needed to improve the ability of small and minority businesses to compete successfully for contracts. The program would encourage approved mentors to work with small businesses and MBEs to provide

technical, management, and/or financial (equity/loans) assistance. A mentor can also help its protégé by using the protégé to win subcontracting and/or prime contracts with the State in the form of joint venture arrangements. This program will enhance the capabilities of the protégé and improve its ability to successfully compete for contracts.

Recommendations

Accessing state services

1. **Create a “one-stop shop” Internet portal, developed and managed by GOMA, for small and minority businesses.**

ROI/Benefits

- Provides one point of access to state services and information for small businesses and MBEs.
- Levels the playing field among small and minority businesses since access is equal for everyone.
- Eliminates waste and redundancy caused by several agencies duplicating services.
- Saves small and minority businesses resources currently expended going door-to-door to numerous state agencies.

Risk of No Action

- Continues inaccurate, ineffective identification of state services.
- Perpetuates frustration caused by door-to-door approach.
- Promotes redundancy and waste in state agencies.

Enforce the existing MBE law.

2. **Reinforce the role of GOMA as the agency ultimately accountable for ensuring that the State complies with the law.**
3. **Establish consistent, uniform management performance evaluations which include accountability and responsibility for achieving MBE goals.** A system of incentives for achieving and exceeding established goals balanced with appropriate sanctions for non-performance must be put in place immediately. If cabinet secretaries and appropriate employees for state agencies do not meet the MBE goals during the fiscal year, their annual performance appraisals should be affected.
4. **Establish an Ehrlich-Steele Minority Business Impact Report Card.** This report card will grade the performance of prime contractors and state agencies in the execution of the Program based on consolidated monthly compliance performance reports submitted to GOMA. The information to create the grades will be compiled from the input of the Governor, the Lt.. Governor, the Governor’s Council for Historically Under-utilized Businesses and GOMA.

ROI/Benefits

- Compliance with the law.
- Accountability by State officials.
- A more stable, yet dynamic, community of MBEs with enhanced capacity to compete and win increasingly lucrative contracts while enabling the State to realize procurement cost savings through more competitive vendor pricing.
- Revenue growth for MBEs will create additional Maryland jobs and promote economically self-sufficient and socially stable communities.
- Expansion of the tax base will in turn enable the State and local jurisdictions to increase investments in infrastructure improvements, education and job training initiatives essential for attracting and retaining businesses to Maryland.

Risk of No Action

- Continues under-utilization of MBEs.
- Opens up opportunities for lawsuits.
- Creates negative publicity.
- MBEs will not develop and grow in Maryland.

Change the procurement system

5. Designate GOMA as the agency responsible for the oversight and scrutiny of the use of bundled contracts.

This function should be performed in conjunction with the Board of Public Works. When a bundled contract is used for an acquisition above a \$10 million dollar threshold, a written justification for using a bundled contract should be submitted to GOMA along with the identification of alternative strategies and the rationale for choosing a particular strategy over the alternatives. GOMA's staff must be increased to include procurement expertise to perform the necessary analysis.

ROI/ Benefits

- Provides more opportunities for small and minority businesses to bid and win state contracts.
- Provides accountability for elimination of contract bundling.

Risk of No Action

- Opens up opportunities for lawsuits.
- Creates negative publicity.

Provide more support for business development and growth

- 6. Establish small business procurements that are targeted only to minority and small businesses.** As a pilot, for calendar year 2004, the major procuring agencies must allocate 10 percent of their procurements for small business procurements. Using the federal government model, GOMA will consult the Board of Public Works, the leadership from the major procuring agencies, and the Small Business Development Centers to determine guidelines for small business procurements.
- 7. Remove the \$750,000 personal net worth cap.** This cap was inherited from the Federal Small Business Administration's Disadvantaged Business Enterprise Program. There is no legislative history to support a cap. The cap was adopted solely as a way of responding to concerns in court orders which required race-conscious procurement programs to be narrowly tailored. There have not been any studies conducted which show a minority business-owner is subject to more or less discrimination based on the amount of money he or she has.
- 8. Create a statewide mentor/protégé program that encourages business-to-business relationships where large businesses can link, advise, and partner with small businesses.** One of the most notable programs of this type is run by the Department of Defense (DoD). The DoD Mentor-Protégé Program has not merely been a process of teaming and developing new skills in the use of improved business systems and strengthening infrastructure, it is ultimately the means for a protégé to become a valued business partner and an innovator with a relationship that fosters technical progress.

ROI/Benefits

- Provides small business procurements so minority and small businesses are able to compete on a more level playing field.
- Improves the ability of small and minority businesses to complete successfully for contracts.
- Process is race neutral, benefiting all small and minority businesses.
- Removes obstacles that inhibit business growth.

Risk of No Action

- Lack of opportunities and assistance for growth of small and minority businesses remain.
- Continues obstacles for business growth.

PROCUREMENT AND COMPLIANCE

Introduction

The procurement compliance process is the bedrock of any MBE participation program. Maryland has one of the most complex procurement laws in the country. Experts have a difficult time navigating through the labyrinthine regulations and the myriad exceptions.

Consequently, MBEs find themselves at the mercy of a system that, as one state official put it; "...is like an old life insurance policy, you never know what your benefits are until you die." Similarly, MBEs find themselves never knowing whether their procurement will be successful until the contract closes and they add up their receipts. A separate commission was convened to explore efficiencies in the procurement process.

The shortcomings of the Program have been well documented, most recently, in the November 2002 Legislative Performance Audit of the Program. The auditors summarized their findings as follows:

1. Reported MBE participation data was often unsupported, inaccurate or inconsistent with reporting guidelines.
2. GOMA did not use actual payments to MBEs as an evaluation tool or measure of program success.
3. State agencies did not adequately monitor MBE participation in contracts.

This audit further concluded:

- GOMA did not adequately oversee the Program.
- State agencies did not effectively monitor MBE participation on their contracts.
- GOMA did not ensure the reliability of annual MBE participation activity submitted by state agencies.
- The 2001 MBE participation contract award statistics were overstated by 40 percent for the agencies accounting for over one-half of the state's MBE participation.

The audit report cited represents one of many reports which point out the Program's shortcomings. Other reports include the November 1991 Term Baltimore City Grand Jury Report on Maryland's Program, the 1994 and 1999 Maryland Disparity Studies, the Erlich/Steele Transition Team: Executive Assessment Report and the Task Force on MBE Reform—Final Report, to name a few.

All of these reports document the fact that the Program is at best a flawed procurement program. The Program can be fixed by empowering GOMA, the organization that has oversight for its success, to address the specific, underlying problems in the procurement compliance process.

The Commission generally found the existing MBE law adequate for addressing the bulk of the procurement compliance problems. The challenge is to find creative ways to cost effectively address monitoring, accountability, compliance, and enforcement of existing laws and regulations.

As the Commission evaluated best practices around the State, it identified a significant correlation between funding, staffing, executive leadership and the success of an

"Often times a contractor that is bidding on a state contract contacts me and asks me to price out the catering portion of the contract. Then he lists my company as the subcontractor when he submits his bid. Once he is awarded the contract, I never hear from him again."

**Errol Taylor, Caterer,
Baltimore**

agency's Program. Technology could also be applied to dramatically improve the Program without a corresponding increase in staffing. Software systems make this possible by pushing data entry out to the contractors and providing tools to equip state staff to monitor exceptions.

Investing in a software system can make a dramatic difference in the State reaching the Program's goal of maximizing MBE participation in state contracts. When every business in Maryland works, Maryland's economy works. The Procurement/Compliance related recommendations lay the foundation for cost effectively transforming the Program into a national success story.

The Commission developed actionable recommendations for fixing the Program. The recommendations can be grouped into four categories:

- Laying the Foundation for Reform—Systems, Documentation and Training
- Empowering State Agency Staff for Reform
- Addressing Subcontractor Abuse
- Putting Teeth into the Law

The recommendations grouped under "Laying the Foundation for Reform" provide the underpinnings of a successful Program. They include:

- Implementing a software system to accurately measure Program performance of all participants using a unique vendor I.D.
- Putting in place a statewide handbook to guide state agency implementation of the Program.
- Centralizing all state procurements on eMaryland Marketplace.
- Requiring all agencies to use a procurement plan to manage MBE participation.
- Allowing GOMA to create high-level goal setting guidelines for state contracts.

"Empowering State Agency Staff for Reform" includes critical additional tools, training and accountability focused recommendations to empower procurement officers and MBE liaisons:

- Give all procurement officers Program training and all MBE liaisons procurement training.
- Include Program success measurements in MBE liaison and procurement officer performance appraisals.
- Create a career path for MBE liaisons.
- Through training and incentives, motivate procurement officers to encourage the use of MBE prime contractors.

Recommendations grouped under "Addressing Subcontractor Abuse" offer solutions for much of the frustration heard at the Commission's public hearings and shared with GOMA on a daily basis by subcontractors.

- Eliminate the 10-day waiting period before naming MBEs (COMAR 21.11.03.10 (B)(1)) and include contract/agreement between prime contractors and subcontractors as part of bid package submitted to the State.

- Give MBE liaisons the same level of review authority as procurement officers on contracts/solicitations.
- Enforce prompt payment regulations and standards.
- Establish a Commercial Non-Discrimination Statute that will make it unlawful for any firm that is engaged in business with the State to discriminate in its relationships with any of its contractors.

The “Putting Teeth into the Law” recommendations prepare the way for fixing the current enforcement issues with the Program. These recommendations include:

- Making liquidated damages mandatory for failure to meet MBE goals a requirement of every contract with an MBE goal.
- Enforcing contract sanctions for failure to meet MBE goals up to and including termination.
- Enforcing the requirement to report Program violations to the attorney general’s office for possible investigation/prosecution and/or initiation of suspension/debarment actions.
- Giving consideration to a contractor’s documented Program performance on prior contracts when awarding new contracts.
- Rewarding/Reprimanding state agencies and contractors for their Program performance.

The Commission believes these recommendations, collectively, will move this Program from what Governor Ehrlich and Lieutenant Governor Steele have called a “farce” and a “sham”, respectively, to a procurement/compliance national best practice model.

Recommendations

I. Laying the Foundation for Reform—Systems, Documentation, & Training

1. Immediate acquisition and implementation of a software system to store and report information required to accurately measure and manage the performance of all Program participants. This will require all vendors and contractors to be tracked via a unique vendor I.D.

This is the first and most critical step in addressing the monitoring, compliance, and lack of focus on payment problems documented in the 2002 Legislative Performance Audit of the Program

2. Develop and implement a statewide Program handbook for use by every agency to guide their implementation of the Program. By reference make it a part of COMAR.

3. List all state procurement notices over \$2,500, at no charge to the public, on eMaryland Marketplace. Enhance eMaryland Marketplace to provide email alerts to businesses based on accurate and easily understood lists of contractor and solicitation services and products.

4. Require a procurement plan from each agency that will list quantitatively the procurement and MBE participation goals.

5. Allow GOMA to develop MBE goal setting guidelines for state contracts, which are based on the differences in the availability of MBEs by industry, product and service categories.

ROI/Benefits

- A centralized software system would be a significantly less expensive alternative to costly, risky, and time consuming changes to the state's current financial management and procurement software systems (FMIS/ADPICS).
- A centralized software system would leverage the State's current investment in FMIS/ADPICS through data interfaces.
- Provides race and gender-neutral measurement and monitoring of subcontractor, prime contractor, and state agency performance.
- Ends redundant efforts at numerous state agencies to create their own manual or function without a manual.
- Leverages existing agency best practices to benefit all 75 state agencies reporting MBE participation.
- Fosters Maryland's image as a business friendly state by creating a consistent approach to the implementation of the Program at all state agencies.
- Increases quality of MBE liaisons and procurement staff by making it easier for employees to develop excellent skills and transfer them to other state agencies.
- More businesses will pursue state contracts once they have been given a glimpse at the opportunities available via free access to eMaryland Marketplace.

- All businesses will benefit from being able to access the vast majority of state procurements through a single system.
- Simplifies state agency access to MBE prime and subcontractors to fulfill their MBE participation goals.
- A centralized bidder registration process (unique vendor/contractor I.D.) will be web-based and will provide the means for: (1) targeted outreach and electronic notification to appropriate segments of the bidder population for all state bid opportunities; (2) tracking the relative availability of all vendors by race, ethnicity, gender, and industry segments; (3) identifying various certifications held by bidders (e.g., MBE, SBE, DBE); (4) setting realistic contract-specific goals for MBE participation based on current, up-to-the-minute availability; (5) tracking bidding activity and actual dollars paid to each and every state contractor and subcontractor (MBEs and non-MBEs); and (6) state buyers to readily research information about available vendors for supplying every kind of commodity and service purchased by the State.

Risk of No Action

- The façade of statistical success will continue. Without adequate measurements the Program cannot be fixed. MBEs, non-MBEs, MBE liaisons, procurement officers and agency management will continue to participate in a program that has no accountability. An age-old management adage sums it up best: if you cannot measure it, you cannot manage it. The 2002 Performance Audit Report found the absence of monitoring and accountability as the root causes behind the problems crippling the Program.
- Words like “farce” and “sham” will continue be used to accurately describe the state of the Program.
- In the absence of any action on these foundational recommendations, many of the other recommendations in this report will not succeed.
- Bulk of Program problems shared by businesses at the Commission’s four public hearings will not be addressed.
- Creates frustration, as current MDOT database does not have sufficient search capabilities or data needed by businesses and state agencies to easily find qualified MBEs.
- Continues the inconsistent implementation of the Program across state agencies and generates additional complaints.
- As the Program gains more attention, increases the State’s exposure to lawsuits since the law is not consistently enforced for MBEs or non-MBEs.
- Maintains Maryland’s image as an unfriendly State for small and minority business.
- The current inconsistent approaches to goal setting across state agencies under-utilize MBEs when the goals are set too low and penalize prime contractors when the goals are set too high.
- Small and minority businesses, in particular, will continue to be frustrated at the difficulty of searching a variety of paid and free sources for partial listings of state procurement opportunities.

- State agencies will not receive feedback and guidance in time to make a difference in the quality of their Program implementations.
- State agencies will continue to miss opportunities to do business with quality vendors.
- Without a unique vendor I.D. it will be significantly more costly, labor intensive and error prone to collect performance data on the Program participants.

II. Empowering and Equipping State Agency Staff for Reform

Two of the most important players in the procurement process in the State of Maryland are the agency procurement officer and MBE liaison. Often times, these individuals can determine, to a large extent, the success of the agency's MBE efforts.

6. Help address Program shortcomings documented in the 2002 Legislative Audit of the Program by implementing these changes for MBE liaison officers and procurement officers:

- A. Make Program training a part of all state procurement training and require procurement training for MBE liaisons.**
- B. Include consistent adherence to all procedures, policies, and guidelines for implementing the Program as part of the procurement officer's and MBE liaison's annual performance appraisals.**
- C. Supply a career path for MBE liaisons that reflects their primary job responsibility as contract compliance officers.**
- D. Create incentives and provide training to encourage procurement officers to use MBE prime contractors.**

ROI/Benefits

- Training and tools enable two of the most important players in the Program, MBE liaisons and procurement officers, to make the Program work.
- Increases the quality of MBE liaisons and procurement staff by making it easier for employees to develop excellent skills and transfer them to other state agencies.
- Greatly increases the chances of success of many of the Commission's recommendations.
- Makes MBE liaisons and procurement officers accountable for the Program's success.
- Employees are more likely to address goals measured in performance reviews.

Risk of No Action

- MBE liaison's ability to adequately monitor and enforce compliance and accountability are compromised.
- Inconsistent implementation of the Program across state agencies due to complexities of state procurement laws and regulations. Maintains wide variances in state procurement staff knowledge and understanding of the Program.
- Status quo, "how we've done things in the past", determines what we do in the future instead of the law and regulations governing the Program.

III. Addressing Subcontractor Abuse

- 7. Eliminate the 10-day waiting period before naming MBEs and make the contract or partnering agreement between contractors and subcontractors a part of the bid package submitted to the State.**
- 8. Give MBE liaisons the same level of review authority as procurement officers on solicitations and contracts.**
- 9. Enforce regulations to establish standards and sanctions that ensure the prompt payment of subcontractors. COMAR 21.07.02.05.2 & 21.10.08.**
- 10. Establish a Commercial Non-discrimination Statute that will make it unlawful for any firm that is engaged in business with the State, or seeking to be engaged in such business, to discriminate on the basis of race or gender in the solicitation, selection, or treatment of any of its contractors, vendors, suppliers, or commercial customers.** This statute will also provide an administrative process for filing and investigating complaints with administrative hearings by an impartial and independent hearing officer who will render findings and impose sanctions for violations. The sanctions could include, but not be limited to debarment, suspension of existing contracts, referral for criminal prosecution for fraud, and/or a consent agreement among the parties to remedy the identified discrimination and to prevent its reoccurrence in the future.

ROI/Benefits

- Enforcing prompt payments will ensure minority contractors prefer doing business with the State of Maryland.
- Granting review authority to MBE liaisons will indicate a possibility for minority business advocate intervention.
- Enforcement of sanctions would mean MBE subcontractors would have less to fear about reprisals from prime contractors after voicing complaints.
- Ninety percent of business procurement spending is done in the commercial markets, and not by government. A commercial non-discrimination statute provides a cost-effective solution for ending discrimination in the government and, perhaps more importantly, the commercial markets.
- Ensuring MBEs are paid will help get more MBEs to participate in the

Program.

Risk of No Action

- Many contractors will continue to prefer doing business with Baltimore City because they pay more promptly than the State.
- The State will continue to discourage minority business growth and ignore subcontractor abuse issues.
- Although the Program exists to eliminate discrimination in State contracting, it will not have the same level of impact on the commercial market in the absence of a commercial non-discrimination statute.

IV. Putting Teeth in the Law

- 11. Extend COMAR 21.07.02.08 to require liquidated damages from contractors that breach their agreed MBE goals.**
- 12. Enforce contract sanctions for default, up to and including termination, when the contractor has violated the contract terms, conditions and applicable regulations.**
- 13. Enforce the requirement to report violations of the Program to the office of the Attorney General for possible investigation/prosecution and/or initiation of suspension/debarment actions.**
- 14. When awarding contracts, give consideration to a contractor's documented minority business program performance on prior contracts.**
- 15. Reward/reprimand agencies and companies for their success at meeting and exceeding the MBE participation goals.**

ROI/Benefit

- Once state agencies and the attorneys general see that MBE laws and regulations are as important for enforcement as any other procurement laws and regulations, we will see dramatic measurable improvements in the quality of Program performance.

Risk of No Action

- The Program will continue to hide behind a façade of statistical success.
- In the absence of consistent enforcement some prime contractors and state agencies will continue to make up the numbers and abuse MBEs.

ACCESS TO CAPITAL AND CREDIT

Introduction

"I had done all of my homework. In fact, my business plan was so good that the Salisbury Small Business Administration called me and asked to see a copy of it. It turned out that the same bankers who were refusing to lend me money called the SBA raving about the superior quality of my business plan thinking the SBA did it for me."

Rachel Polk, Bookstore Owner, Salisbury, MD

Minority businesses are one of the fastest growing sectors in the business community. However, long-standing and systemic difficulties in obtaining working capital or financing for growth limit these firms' ability to play stronger and more vital roles in the growth of Maryland's economy. This limitation will grow as minorities become a larger part of Maryland's population.

The 2001 study on the Utilization of Minority Business Enterprises by the State of Maryland, conducted by National Economics Research Associates, reported that even after accounting for company size and credit history:

- The loan denial rate for African American owned businesses was 27.1 percent higher than that for white owned firms.
- The loan denial rate for Hispanic firms was 23.8 percent higher than that for white owned firms.
- The loan denial rate for other minority groups was 5.2 percent higher than that for white owned firms.
- When loans are approved, African American firms paid an average of .97 of a percentage point higher interest rate than white owned firms.

The study concluded that there is evidence of discrimination throughout the State of Maryland in the small business credit market, particularly towards firms owned by African Americans. Discrimination in the credit market against MBEs can have an important effect on the likelihood that the business will succeed and may even prevent businesses from starting at all. Resolving the gap between a white and a non-white firm's ability to obtain capital and credit is critical to Maryland's economic health, given the changing demographics and changes in the labor market. Closing this gap will require new solutions and assessments of the risks and benefits of investing in MBEs.

According to a Milken Institute report (2000), commissioned by the U.S. Chamber of Commerce, the average venture-based company employs nearly 100 workers within five years and these firms create almost twice as many jobs as their non-venture-backed peers. These companies also grew sales per employee twice as quickly as Fortune 500 companies.

Based on the information collected through its work, the Commission strongly believes that it is in Maryland's best interest to expand the pool of resources available to provide the access to capital and credit necessary for MBEs to start-up and thrive. It is important that these financial resources be diverse since each MBE owner's need for capital and credit are different depending on the growth stage of their business, its size, and revenue potential. The State should also provide funding for more "patient", back-end loans that are considered too risky for traditional financial institutions.

Additionally, the Commission identified access to pre-loan technical assistance and advisory services as a critical need for emerging MBEs. The lack of access to technical assistance often results in loan applications submitted by MBEs being rejected. Pre-loan educational programs can support the needs of minority entrepreneurs that are not business credit savvy and provide assistance to these entrepreneurs to help their loan applications be approved. Although the State is already funding the successful efforts of the Small Business Development Centers and several state agencies have assumed responsibility for additional training for small and minority businesses, there is no

mechanism in place to measure the effectiveness of the training.

The Commission also found limited data on the number and amount of loans to MBEs from both the public and private sectors. Finally, the Commission concluded there is no central repository for information, public education, awareness and marketing of the available programs. MBEs and small businesses are forced to rely on a hit-and-miss approach to finding the resources their businesses so desperately need.

In light of these findings, the Commission puts forth the following recommendations:

Recommendations

Develop new sources of capital for investment and lending, and provide additional capital to existing small and minority business service providers.

- 1. Mandate that the State's Pension Review Board consider applying socio-economic policy to support pension fund investments in MBEs.**
- 2. Allocate a portion of new and existing gaming revenues to fund an existing or new pool of risk-capital funds with "patient" money to support investment in MBEs.**
- 3. Start a Certified Capital Company (CAPCO) as a method of allocating tax credits to encourage and leverage private venture capital firms certified under the legislation.**
- 4. Set a goal for the percentage of loans granted to MBEs from each of the State's revolving loan funds.**
- 5. Coordinate and consolidate the State's discretionary funding and ensure it is directed in a way that benefits minority businesses.**
- 6. Create additional funding sources for micro-enterprise lending.**

ROI/Benefit

- Increases the success rate of small/local minority businesses.
- Provides more funding for "higher" risk investments.
- Energizes the local economy by lowering unemployment.
- Raises the State's revenues through taxes.

Risk of No Action

- Without increased funding to existing programs and the creation of new programs this issue will continue to be the major obstacle to the growth and survival of small and minority businesses.
- Maintains the status quo for minority businesses and the playing field remains uneven.
- Private sector will not take on risks if the State does not.

"People need to understand that traditional funding sources like banks, are adverse to lending money to businesses they perceive as a risk. It is a well-documented fact that the percentage of minority business owners who are turned down for traditional loans is far greater than other businesses."

Joe Gaskins, CEO Non-Profit, Largo, MD

- 7. Create a “Linked Deposit” program in statute that will establish certain reporting requirements for the State’s banking institutions regarding commercial loan applications and that will leverage the State’s deposits and/or investments in financial institutions and funds to promote more aggressive lending practices and greater access to capital with respect to MBEs.**

ROI/Benefits

- Increases the amount of capital now available for MBEs. Additionally, encourages banks doing business with the State to offer certified small and minority businesses accounts with lower fees.
- Provides a mechanism to measure the performance of individual state agencies and private lenders with respect to their lending practices to small and minority businesses.
- Provides access to valuable data that can be used by both the public and private sectors to measure the success of various programs and to take corrective action when necessary.

Risk of no Action

No Risk

- 8. Develop a revolving loan fund to be capitalized from the proceeds of taxable bond issuances.**

ROI/Benefits

- Makes additional capital resources available to Maryland’s small and minority business community.
- Provides a source of additional funds for Maryland’s Neighborhood Business Development Program.
- Provides below market interest rates.

Risk of No Action

- Contributes to the failure of small and minority businesses to grow and develop because of the lack of risk capital.

Develop and encourage program guidelines, criteria and management practices in state agencies, and private sector financial institutions that are responsive and sensitive to the unique financing needs of minority businesses.

- 9. Increase existing loan program efficiencies by reducing the turnaround time between application submittal and closing.**

- 10. Change the focus and emphasis of state eligibility and underwriting**

criteria from traditional “credit risk analysis” to evaluation of “long range outcomes.”

- 11. Establish a cohesive monitoring system to account for the number and amount of private loans and investments to MBEs and the outcomes of these loans at no less than three-month intervals.**
- 12. Initiate a change of management practices for state funded financing programs and establish a monitoring system to account for the amount and outcomes of state loans and grants at no less than three month intervals.**
- 13. Establish an independent review and approval authority, overseen by GOMA, for financing programs, comprised of a diverse group of people representing small and minority business and community interests.**
- 14. Create programs to encourage innovation among state agencies involved in lending to small businesses and encourage local financial institutions to provide more access to capital for MBEs.**

ROI/Benefits

- Provides a mechanism to measure the performance of individual state agencies and private lenders with respect to their lending practices to small and minority businesses.
- Gains valuable data for use by both the public and private sectors to measure the success of various programs and to take corrective action when necessary.
- Increases access to capital and enables investors to make improved information-based decisions about financing using better data, credit scoring and analytical techniques than currently being used in the financial services sector.
- Saves time and money by identifying successful programs and terminating or fixing flawed programs.
- Makes state agencies accountable for providing MBEs access to a fair share of state loans and grants.

Risk of No Action

- Discriminatory practices will continue to exist throughout the State, thereby, hindering the growth and success of minority business. Financial institutions cite the lack of information on the minority business community and financing performance as a major impediment to moving more aggressively in this marketplace. The lack of reliable historic information on minority business loans and investments makes it difficult for them to evaluate and price the risk of loans to minority firms.
- No one accepts accountability for discriminatory practices.

Initiate, sustain, and monitor training and technical assistance programs that strengthen the business management skills of minority business.

- 15. Triple the level of funding for the Small Business Development Centers (SBDC).**
- 16. Consolidate all state small and minority business technical support programs that complement the SBDC.**
- 17. Evaluate the Procurement Technical Assistance Program (PTAP) to determine its value to the small and minority business community. Based on this evaluation, adjust the State's funding for the PTAP.**

ROI/Benefits

- In fiscal year 2003, with a budget of only \$2.1 million, the SBDC was able to provide assistance to 12,666 clients throughout the State of Maryland. The State's portion of the funding was \$566,639, roughly 25 percent. Since the federal government will match State funding for the SBDC dollar for dollar, the State has a unique opportunity to leverage federal dollars by providing an additional \$1.5 million in funding for FY 05, thereby raising the total SBDC budget to \$ 4.1 million, which will allow the SBDC to assist more than 24,000 clients in FY 05.
- The SBDC has a proven track record of success. A quality control is built into its processes and frequently monitored. Its consultants are fully trained in all areas of business development and management.
- Avoids the hit-and-miss approach currently utilized by several state agencies attempting to provide this service and eliminates wasteful redundancies.
- By coordinating all State minority and small business technical assistance programs, the programs can be evaluated to determine if there is a gap between the SBDC's programs and the assistance minority and small businesses need. If a gap exists, the State can either request that the SBDC revise its program, or create a new program to provide the additional assistance.
- A race and gender neutral system where all small businesses will benefit.

Risk of No Action

- Many small and minority businesses still will not have access to the necessary technical assistance they need.
- Fewer small and minority businesses will be developed, and those that are developed will have a significantly higher rate of failure.
- Redundancies, waste and lack of accountability for state programs will continue.

18. Create a public information and public awareness campaign for the resources available to small and minority businesses. Adequately resource and staff GOMA to create and monitor centralized access to minority business assistance services including, but not limited to, marketing and training resources in a one-stop shop format.

ROI/Benefits

- Provides one location for small and minority businesses to get comprehensive information about the financing available to them.
- Eliminates redundancies and waste in State government.
- Provides an oversight mechanism to measure the success of these efforts and change the process as needed.
- A race and gender neutral system where all small businesses will benefit.

Risk of No Action

- The success or failure of an MBE or small business owner may be determined by the accuracy of the information and access to opportunities he or she is given.
- There will be no accountability for ensuring that MBEs and small businesses have access to the information and opportunities they need to succeed.
- Currently, the MBE liaisons in each state agency develop their own lists of available resources. The success of their efforts varies according to their individual skills and training.
- Inaccurate information can lead to negative publicity and leave the State open to lawsuits.
- State dollars and other resources will continue to be wasted on mediocre programs that provide little or no benefit to either the State or to businesses.
- Redundancies and waste among state agencies will continue.

CERTIFICATION

Introduction

"I was surprised by the complexity of the certification process. I thought that since the federal government had already certified us as an 8(a) company the state process would be less intense. Instead, the process, which included a panel interview, was very intimidating."

**Nhora Murphy,
Advertising and Public
Relations, Silver Spring**

Although not a requirement for being awarded a contract, the State of Maryland strongly encourages minority businesses that want state contracts to become certified. Certification allows the procurements awarded to minority businesses to count towards the State's MBE participation goals. Certification was developed to ensure that firms requesting MBE status are actually at least 51 percent owned by a member of a minority group or a woman and the critical decisions in the day-to-day operations of the company are being made by the minority group member or woman owner.

The state agency currently having regulatory responsibility for certification is MDOT. This is confusing to MBEs who do not see the connection between their business and transportation. Certification is just the first step in the business development cycle for MBEs that want state contracts. There is currently no connection between this step and obtaining a state contract. The core function of MDOT is construction, therefore their programs, including certification, are construction-centric.

The State process for certification is currently a cookie cutter model that is not sensitive to the diverse needs of the full spectrum of business interests. Before a business can be certified, the owner must complete an application and submit copies of supporting documents. At a minimum, these include copies of business licenses, incorporation papers, tax returns, financial statements, cancelled checks, organizational charts and bank signature cards. In addition, an MDOT official conducts a site visit to the businesses primary business location. Once the documentation is completed, a committee reviews all the certification materials and MBE owners must appear before the committee for a panel interview.

This process is very similar to the process required for Federal 8(a) certification. Although all Maryland jurisdictions with certification programs, except Baltimore City, accept the state's certification, the State does not accept the certification of other jurisdictions.

Moreover, there are few incentives for MBEs to be certified. Maryland procurement regulations offer no price or competitive advantages for firms certified as minority businesses. All businesses can bid and be awarded contracts, regardless of their certification status. In fact, many MBEs have reported that there is a stigma attached to being certified (i.e., it gives the impression a business is somehow less capable of performing based on merit). As a result of all of these issues, only about 2,500 of the almost 200,000 Maryland-based businesses eligible for certification are, in fact, certified.

Businesses that are certified think with certification comes an implied promise from the State that they will be awarded procurements. They are frustrated when this doesn't happen. Certification does not guarantee a business will be awarded a contract. Certified firms must market their business services as any business would.

The Commission is hopeful that by more vigorously monitoring the Program and by building in incentives, certification will become more valuable. However, much can still be done to improve the certification process to make it less burdensome and more attractive.

Recommendations

"I have been a certified minority business enterprise since 2000. So far, we've gotten \$90.00 in state contracts. Too often the state's contracts are bundled with so many services a small business cannot compete. I am hopeful the Commission will find a solution for this problem."

**Roy Kim, IT Firm,
Rockville**

1. Remove the non-federal certification process from the MDOT and place it in GOMA as part of creating the one-stop shop for MBEs.

ROI/Benefits

- Allows minority firms to receive state services from a centralized service center designed to meet their needs.
- Allows for a holistic, seamless model for minority business development in the State. GOMA will provide all business life-cycle services.
- Eliminates frustration of MBEs not knowing where to go for help by providing an integrated state-wide service delivery system which is easy to access and business friendly.

Risk of No Action

- Continued confusion about where to go for state services.
- Fragmented service delivery.
- Continued construction-centric model for certification.

2. Allow state agencies to permit prime minority contractors and minority vendors to sign and submit, with a bid or offer of less than \$250,000, a sworn affidavit attesting to the fact that the firm is a minority owned and controlled firm capable of MBE certification at that time. Require the firm to file a formal certification application with the State's certifying agency within 10 business days after being notified of contract award. If a firm fails to submit the required certification application in the time frame required or if the firm is not certified by the State certification agency then the contract dollar amount cannot be reported as MBE participation.

ROI/Benefits

- Eliminates the burden of preparing a certification package prior to the firm actually being awarded a state contract.
- Almost no risk of fraud because firms win on their own merit.
- Allows non-certified MBEs to bid on contracts without waiting for certification.
- Provides capacity building for MBEs.
- Provides an incentive to apply for certification.

Risk of No Action:

- MBEs may be denied an opportunity to be awarded contracts prior to being certified, or while their certification is pending.
- MBEs continue to waste scant resources to get certified without ever being awarded a state contract.

3. Initiate reciprocity agreements with local and/or federal government's MBE and/or disadvantaged business enterprise certification programs of equal or greater stature as determined by the State certification agency.

ROI/Benefit:

- Increases the pool of certified minority businesses available to participate in the Program.
- Reduces the cost of multiple certification agencies reviewing and certifying minority firms who have already been certified by a local government or the federal certification process.
- Eliminates the burden of small firms having to submit multiple certification packages.

Risk of No Action

- The pool of certified businesses available for agencies to count towards the state's MBE goal would be limited.
- MBE costs associated with certification remain increased because of multiple requirements for MBE certification.

4. Require that any business certified as an MBE by the State's certification agency and that meets the criteria as identified in COMAR 21.01.02.01.B(80), shall automatically be placed on the small business vendor list of the Department of General Services and MDOT.

ROI/Benefit:

- Allows a small minority firm to be eligible for a five percent price preference or a pre-determined percentage preference upon approval by the Board of Public Works.
- Increases the opportunities for minority firms to sell their products and services to the State.
- Lessens the paper work for an MBE to be identified as a small vendor.

Risk of No Action

- Loses the only value to certification.

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VI. Implementation of Recommendations

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Implementation of Recommendations by Topic

Implementation is the final phase in delivering the Commission's recommendations. The expected outcomes have been defined by the recommendations submitted by each of the six committees. The Commission presented a compilation of over 50 recommendations. The Commission believes that the sum total of all its recommendations, implemented successfully, will result in a national best practice Program.

The problems that exist have occurred over a period of time. Therefore, it is not the expectation of the Commission that this will happen overnight. This Report will serve as a reference to be used over the next few years to fully implement reform. The practical application of implementation takes into consideration the political climate, budgetary constraints and organizational infrastructure.

The Process -Phase 1 Implementation

- The Governor will review the recommendations and make appropriate decisions.
- Cost feasibility, potential impact, and dependencies will be determined.
- Legislation will be drafted on selected recommendations to be included in the 2004 General Assembly package for Phase I Commission Implementation.
- Executive Orders will be developed as a part of Phase I Commission Implementation.
- A determination of 2004 Management Initiatives will be coordinated by GOMA.
- GOMA will be responsible for project management.

Following is a break out of all recommendations by (1) committee/topic, (2) legislation only, (3) executive orders only and (4) management initiatives only.

A. GOMA Strategy

1. Make GOMA a department and provide it with the staff and budget allocations needed to meet its statutory responsibilities for Program oversight, compliance, outreach, and the delivery of services.--**Legislation**
2. Ensure the Program comes into and remains in compliance with Maryland's MBE laws and procurement regulations by having MBE liaison officers, as defined in Volume 20 Title 21 State Procurement Regulations, report directly to GOMA. --**Executive Order**
3. Continue the work of the Commission by creating the Governor's Council for Historically Under-utilized Businesses.--**Executive Order**
4. For efficiencies that can be derived, minority commissions (Women, Hispanic, Asian/Pacific, etc.) should be moved to GOMA.--**Executive Order**

This report will serve as a reference to be used over the next few years to fully implement reform.

A review of all of the recommendations was conducted and a determination was made about how each should be implemented. The recommendations were divided into three categories those that required:

(1) Legislation; (2) Executive Order, or (3) Management Initiatives.

5. Require GOMA to establish policies and procedures, and provide oversight and guidance to all activities of the Governor's Office of Business Advocacy in the Department of Business and Economic Development and other state agencies and advocates that impact small and minority businesses. -- **Management Initiative**

B. Business Development

1. Create a "one-stop shop" Internet portal, developed and managed by GOMA, for small and minority businesses. --**Management Initiative**
2. Reinforce the role of GOMA as the agency ultimately accountable for ensuring that the State complies with the law. --**Executive Order**
3. Establish consistent, uniform management performance evaluations which include accountability and responsibility for achieving MBE goals. --**Executive Order**
4. Establish an Ehrlich-Steele Minority Business Impact Report Card. --**Management Initiative**
5. Designate GOMA as the agency responsible for the oversight and scrutiny of the use of bundled contracts. --**Legislation**
6. Establish small business procurements that are targeted only to minority and small businesses.--**Legislation**
7. Remove the \$750,000 personal net worth cap.--**Legislation**
8. Create a statewide mentor/protégé program that encourages business-to-business relationships where large businesses can link, advise, and partner with small businesses.--**Executive Order**

C. Procurement and Compliance

1. Immediate acquisition and implementation of a software system to store and report information required to accurately measure and manage the performance of all Program participants. -- **Legislation** This will require all vendors and contractors to be tracked via a unique vendor I.D.--**Executive Order**
2. Develop and implement a statewide Program handbook for use by every agency to guide their implementation of the Program. By reference make it a part of COMAR.--**Management Initiative**
3. List all state procurement notices over \$2,500, at no charge to the public, on eMaryland Marketplace. Enhance eMaryland Marketplace to provide email alerts to businesses based on accurate and easily understood lists of contractor and solicitation services and products.--**Legislation**
4. Require a procurement plan from each agency that will list quantitatively the procurement and MBE participation goals.--**Management Initiative**
5. Allow GOMA to develop MBE goal setting guidelines for state contracts, which

are based on the differences in the availability of MBEs by industry, product and service categories.-- **Management Initiative**

6. Help address Program shortcomings documented in the 2002 Legislative Audit of the Program by implementing these changes for MBE liaison officers and procurement officers.--**Management Initiative:**
 - Make Program training a part of all state procurement training and require procurement training for MBE liaisons.
 - Include consistent adherence to all procedures, policies and guidelines for implementing the Program as part of the procurement officer's and MBE liaison's annual performance appraisals.
 - Supply a career path for MBE liaisons that reflects their primary job responsibility as contract compliance officers.
 - Create incentives and provide training to encourage procurement officers to use MBE prime contractors.
7. Eliminate the 10-day waiting period before naming MBEs, and make the contract or partnering agreement between contractors and subcontractors a part of the bid package submitted to the State. --**Legislation**
8. Give MBE liaisons the same level of review authority as procurement officers on solicitations and contracts.--**Executive Order**
9. Enforce regulations to establish standards and sanctions that ensure the prompt payment of subcontractors. COMAR 21.07.02.05.2 & 21.10.08.--**Management Initiative**
10. Establish a Commercial Non-discrimination Statute that will make it unlawful for any firm that is engaged in business with the State, or seeking to be engaged in such business, to discriminate on the basis of race or gender in the solicitation, selection, or treatment of any of its contractors, vendors, suppliers, or commercial customers. --**Legislation**
11. Extend COMAR 21.07.02.08 to require liquidated damages from contractors that breach their agreed MBE goals.-- **Legislation**¹³
12. Enforce contract sanctions for default, up to and including termination, when the contractor has violated the contract terms, conditions and applicable regulations. --**Management Initiative**
13. Enforce the requirement to report violations of the Program to the office of the Attorney General for possible investigation/prosecution and/or initiation of suspension/debarment actions.-- **Management Initiative**
14. When awarding contracts, give consideration to a contractor's documented minority business program performance on prior contracts.--**Legislation**¹³

¹³ The Commission is not sure whether these recommendations will require legislation, or could be implemented via Executive Order.

15. Reward/reprimand agencies and companies for their success at meeting and exceeding the MBE participation goals. -- **Management Initiative**

D. Access to Capital

1. Mandate that the State's Pension Review Board consider applying socio-economic policy to support pension fund investments in MBEs.--**Management Initiative**
2. Allocate a portion of new and existing gaming revenues to fund an existing or new pool of risk-capital funds with "patient" money to support investment in MBEs.--**Legislation**
3. Start a Certified Capital Company (CAPCO) as a method of allocating tax credits to encourage and leverage private venture capital firms certified under the legislation.--**Legislation**
4. Set a goal for the percentage of loans granted to MBEs from each of the State's revolving loan funds.--**Legislation**
5. Coordinate and consolidate the State's discretionary funding and ensure it is directed in a way that benefits minority businesses.--**Executive Order**
6. Create additional funding sources for micro-enterprise lending.--**Legislation, see 8 below**
7. Create a "Linked Deposit" in statute that will establish certain reporting requirements for the State's banking institutions regarding commercial loan applications and that will leverage the State's deposits and/or investments in financial institutions and funds to promote more aggressive lending practices and greater access to capital with respect to MBEs.--**Legislation**
8. Develop a revolving loan fund to be capitalized from the proceeds of taxable bond issuances.--**Legislation**
9. Increase existing loan program efficiencies by reducing the turnaround time between application submittal and closing.--**Management Initiative**
10. Change the focus and emphasis of state eligibility and underwriting criteria from traditional "credit risk analysis" to evaluation of "long range outcomes."--**Legislation**
11. Establish a cohesive monitoring system to account for the number and amount of private loans and investments to MBEs and the outcomes of these loans at no less than three month intervals--**Legislation and Executive Order (part of linked deposit)**
12. Initiate a change of management practices for state funded financing programs and establish a monitoring system to account for the amount and outcomes of state loans and grants, at no less than three month intervals. -- **Management Initiative**

13. Establish an independent review and approval authority, overseen by GOMA, for financing programs, comprised of a diverse group of people representing small and minority business and community interests.--**Executive Order**
14. Create programs to encourage innovation among state agencies involved in lending to small businesses and encourage local financial institutions to provide more access to capital for MBEs. -- **Management Initiative**
15. Triple the level of funding for the SBDCs.--**Legislation**
16. Consolidate all state small and minority business technical support programs that complement the SBDC. Eliminate those state programs that duplicate SBDC services.--**Executive Order.**
17. Evaluate the Procurement Technical Assistance Program (PTAP) to determine its value to the small and minority business community. Based on this evaluation, adjust the State's funding for the PTAP.--**Management Initiative**
18. Create a public information and public awareness campaign for the resources available to small and minority businesses. Adequately resource and staff GOMA to create and monitor centralized access to minority business assistance services including, but not limited to, marketing and training resources in a one-stop shop format. --**Management Initiative**

E. Certification

1. Remove the non-federal certification process from the MDOT and place it in GOMA as part of creating the one-stop shop for MBEs.-- **Executive Order**
2. Allow state agencies to permit prime minority contractors and minority vendors to sign and submit, with a bid or offer of less than \$250,000, a sworn affidavit attesting to the fact that the firm is a minority owned and controlled firm capable of MBE certification at that time. Require the firm to file a formal certification application with the State's certifying agency within 10 business days after being notified of contract award. If a firm fails to submit the required certification application in the time frame required or if the firm is not certified by the State certification agency then the contract dollar amount cannot be reported as MBE participation.--**Executive Order**
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4. Require that any firm certified as an MBE by the state's certification agency and that meets the criteria, as identified in COMAR 21.01.02.01.B(80), shall automatically be placed on the small business vendor list of the Department of General Services and MDOT.-- **Executive Order**

Implementation of Recommendations by Action Needed

(Management Initiatives, Executive Order, Legislation)

MANAGEMENT INITIATIVES

A. GOMA Strategy

5. Require GOMA to establish policies and procedures, and provide oversight and guidance to all activities of the Governor's Office of Business Advocacy in the Department of Business and Economic Development and other state agencies and advocates that impact small and minority businesses. -- **Management Initiative**

B. Business Development

1. Create a "one-stop shop" Internet portal, developed and managed by GOMA, for small and minority businesses-- **Management Initiative**
4. Establish an Ehrlich-Steele Minority Business Impact Report Card. -- **Management Initiative**

C. Procurement and Compliance

2. Develop and implement a statewide Program handbook for use by every agency to guide their implementation of the Program. By reference make it a part of COMAR.--**Management Initiative**
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E. Certification

3. Initiate reciprocity agreements with local and/or federal government's MBE and /or disadvantaged business enterprise certification programs of equal or greater stature as determined by the State certification agency.-- **Management Initiative**

Executive Orders

A. GOMA Strategy

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D. Access to Capital

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LEGISLATION

A. GOMA Strategy

1. Make GOMA a department and provide it with the staff and budget allocations needed to meet its statutory responsibilities for Program oversight, compliance, outreach, and the delivery of services.--**Legislation**

B. Business Development

5. Designate GOMA as the agency responsible for the oversight and scrutiny of the use of bundled contracts. -- **Legislation**
6. Establish small business procurements that are targeted only to minority and small businesses.-- **Legislation**
7. Remove the \$750,000 personal net worth cap.-- **Legislation**

C. Procurement and Compliance

1. Immediate acquisition and implementation of a software system to store and report information required to accurately measure and manage the performance of all Program participants. -- **Legislation** and **Executive Order**
3. List all state procurement notices over \$2,500, at no charge to the public, on eMaryland Marketplace. Enhance eMaryland Marketplace to provide email alerts to businesses based on accurate and easily understood lists of contractor and solicitation services and products.-- **Legislation**
7. Eliminate the 10-day waiting period before naming MBEs, and make the contract or partnering agreement between contractors and subcontractors a part of the bid package submitted to the State. -- **Legislation**
10. Establish a Commercial Non-discrimination Statute that will make it unlawful for any firm that is engaged in business with the State, or seeking to be engaged in such business, to discriminate on the basis of race or gender in the solicitation, selection, or treatment of any of its contractors, vendors, suppliers, or commercial customers. -- **Legislation**
11. Extend COMAR 21.07.02.08 to require liquidated damages from contractors that fail to obtain their MBE goals.-- **Legislation**¹³
14. When awarding contracts, give consideration to a contractor's documented minority business program performance on prior contracts.-- **Legislation**¹³

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D. Access to Capital

2. Allocate a portion of new and existing gaming revenues to fund an existing or new pool of risk-capital funds with “patient” money to support investment in MBEs.-- **Legislation**
3. Start a Certified Capital Company (CAPCO) as a method of allocating tax credits to encourage and leverage private venture capital firms certified under the legislation.-- **Legislation**
4. Set a goal for the percentage of loans granted to MBEs from each of the State’s revolving loan funds.-- **Legislation**
6. Create additional funding sources for micro-enterprise lending-- **Legislation** see 8 below
7. Create a “Linked Deposit” statute that will establish certain reporting requirements for the State’s banking institutions regarding commercial loan applications and that will leverage the State’s deposits and/or investments in financial institutions and funds to promote more aggressive lending practices and greater access to capital with respect to MBEs.--**Legislation**
8. Develop a revolving loan fund to be capitalized from the proceeds of taxable bond issuances.-- **Legislation**
10. Change the focus and emphasis of state eligibility and underwriting criteria from traditional “credit risk analysis” to evaluation of “long range outcomes.”-- **Legislation**
11. Establish a cohesive monitoring system to account for the number and amount of private loans and investments to MBEs and the outcomes of these loans at no less than three month intervals-- **Legislation and Executive Order (part of linked deposit)**
15. Triple the level of funding for the Small Business Development Centers (SBDC).-- **Legislation**

E. Certification

None

RECOMMENDATIONS BY OBJECTIVE

Recommendations were designed to meet specific objectives. These objectives and the recommendations that fulfill each objective are shown in the following table.

Table 5

Objective	Strengthening GOMA	Business Development	Procurement and Compliance	Access to Capital and Credit Capital Compliance and Procurement	Certification
Laying the foundation for change	1,4,5	1,2,3,4,5,6	1,2,3,6,10,12,15	11,12,13,14	1,2,3,4
Fixing GOMA	1,2,3,4,5	1,4	1,2	16,18	
Building capacity		4,6,7,8		1-11,13,15,16,17	2,5
Getting state contracts		1,4,5,6,8	1,3,4,5		5
Addressing subcontractor abuse		4	1,6,7,8,11-14		
Putting teeth in the law	1,2	1,2	1,2,7,8,9,11-15		
Providing Increased Capital				1-10	
Making the numbers real		2	1,2,6		
Accountability	1,4,5	2,3	1,2,6,9,12,14,15	11,12,13	
Efficiencies	1,2	1	1,3,4	16,18	3

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VII. Appendices

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APPENDIX A -- EXECUTIVE ORDER: 01.01.2003.16

Governor's Commission on Minority Business Enterprise Reform

WHEREAS, Small business, including minority-owned businesses, comprise approximately 95% of all Maryland companies and employ 39% of Maryland's civilian workforce;

WHEREAS, Minority firms operate in every community of the state, providing a valuable outlet for the entrepreneurship that fuels the state's economy;

WHEREAS, The State of Maryland has long been committed to the inclusion of businesses owned by minorities, including women, in its contracting and procurement activities;

WHEREAS, Disparities in access to capital, lack of information, and the intricacies of the certification process, continue to hinder the success of the Minority Business Enterprise Program;

WHEREAS, The Performance Audit of the Minority Business Enterprise Program conducted by the Office of Legislative Audits revealed untenable monitoring and compliance issues;

WHEREAS, A well-defined and effective Minority Business Enterprise Program is essential to satisfy legal oversight; and

WHEREAS, The Administration recognizes that Maryland's current Minority Business Enterprise Program lacks a comprehensive direction and fails to enforce the policies, regulations, and statutes that are currently in place.

NOW, THEREFORE, I, ROBERT L. EHRLICH, JR. GOVERNOR OF THE STATE MARYLAND, BY VIRTUE OF THE AUTHORITY VESTED IN ME BY THE CONSTITUTION AND THE LAWS OF MARYLAND, HEREBY PROCLAIM THE FOLLOWING EXECUTIVE ORDER, EFFECTIVE IMMEDIATELY:

A. Established. There is a Governor's Commission on Minority Business Enterprise Reform.

B. Purpose. The Commission shall make recommendations to the Governor for specific and measurable actions that should be taken to reform the current Minority Business Enterprise Program.

C. Membership.

(1) The Commission shall be comprised of seventeen members which shall include:

(a) The Lieutenant Governor of the State of Maryland, who shall serve as Chairperson;

(b) Two members of the Senate of Maryland, appointed by the President of the Senate;

(c) Two members of the House of Delegates, appointed by the Speaker of the House; and

(d) Twelve members appointed by the Governor. These members shall include representatives of advocacy organizations with an interest in small, minority, and women-owned businesses.

(2) To the extent possible, Commission members shall represent the major geographic areas of the State, including rural, suburban, and urban communities.

(3) Members of the Commission shall serve at the pleasure of the Governor.

(4) Members appointed by the Governor may not receive any compensation for their services, but may be reimbursed for reasonable expenses incurred in the performance of their duties, in accordance with Standard State Travel Regulations and as provided in the State budget.

D. Duties. The Commission shall have the following duties:

(1) To review the minority business enterprise procedures and practices currently used in State agencies;

(2) To utilize existing studies, reports, and data to examine the state of minority business including:

(a) Barriers to certification;

(b) Access to capital;

(c) Access to opportunities;

(d) Current procurement practices;

(e) Availability of Minority Business Enterprises;

(f) Minority Business Enterprise reporting;

(g) Payments versus awards;

(h) Monitoring and compliance;

(i) Challenges facing State agencies and the business community;

(j) Consolidation of similar services and programs;

(k) Issues reported by the Legislative Auditors;
and

(l) Frequency and method for reporting Minority Business Enterprise awards and/or payments to the Governor's Office of Minority Affairs by State agencies.


(3) To explore the role of the Governor's Office of Minority Affairs and increasing its effectiveness; and

(4) To develop a statewide minority business reform implementation plan including critical success factors, budget, and required resources.

E. Staffing. The Governor's Office of Minority Affairs and the Office of the Lieutenant Governor shall provide primary staff support to the Commission and any subcommittees established by the Commission. The Commission may seek additional staff support from other State agencies or organizations which have expertise in minority business development issues.

F. Procedures.

(1) A majority of members shall constitute a quorum for the transaction of any business before the Commission.



(2) The Commission shall hold hearings around the State to receive public testimony on Maryland's minority business development needs, the effectiveness of current policies and programs, and MBE best practices. G. Reports. The Commission shall submit a final report to the Governor on or before December 31, 2003.

GIVEN Under My Hand and the Great Seal of the State of Maryland, in the City of Annapolis, this 12th Day of June, 2003.

APPENDIX B---RESPONSE TO MANDEL COMMISSION

(Presented to the Mandel Commission November 10, 2003)

Adopting any proposals to merge the Governor's Office of Minority Affairs (GOMA) into the structure of another Cabinet agency will ignore the findings and recommendations contained in the 1991 Baltimore City Grand Jury Report, issued on the Maryland Minority Business Enterprise Program published by the Honorable Joseph H. H. Kaplan, Administrative Judge and the Honorable Roger Brown, Grand Jury Judge. In addition a 2002 Legislative Performance Audit, conducted by the Maryland Office of Legislative Audits and public comments as received and collected through the public hearings currently being held by the Governor's Commission on MBE Reform all recommend and point to an central independent agency.

The 1991 Grand Jury report concerning the Maryland Minority Business Enterprise Program stated in its section III. Conclusions and Recommendations that the wide ranging problems within the Program could be addressed by creating an independent entity, adequately staffed and funded, to "...assure that state agencies are fully participating in and monitoring the Program".

The problems which led to the Grand Jury's recommendation still exist. They were well documented in the November 2002 Legislative Performance Audit of the MBE Participation Program and in the testimony given at the three public hearings held by this commission, the Governor's Commission on MBE Reform.

In order for GOMA to be an effective custodian of the Program its status as an independent agency accountable only to the Office of the Governor must be maintained and reinforced

The management, operation, evaluation and oversight of the State's Program represent the core responsibilities of the Governor's Office of Minority Affairs (GOMA). GOMA's oversight responsibilities place it in the role of an inspector general office (similar to the Attorney General's Office or Ethics Board) for "equal business opportunity" that serves several watchdog functions, including monitoring and auditing the procurement practices of other State agencies to ensure that minority and women-owned businesses are receiving equal access to state resources, such as contracts, financing, and business development opportunities.

For example, GOMA will need to review and audit DBED's activities regarding its efforts to attract MBEs to the State, to retain and facilitate the expansion of existing MBEs, and meet its MBE participation goals.

To merge GOMA into the structure of another Cabinet agency will, in our opinion, diminish its credibility and legitimacy by guaranteeing that its goals, objective and raison d'être will be subsumed by the narrow priorities of any particular bureaucracy. Therefore, preventing an independent, adequately staffed, and funded GOMA from becoming an effective advocate for MBE's and neutralizing its potential as a supremely effective vehicle for promoting and ensuring the growth of a strong MBE community, whose health is vital to building and sustaining Maryland's overall economic viability and sufficiency.

APPENDIX---C
DRAFT GOMA RESOLUTION (8/7/03)

A Resolution of
The Governor's Commission on Minority Business Enterprise Reform

In support of
A Significant Expansion of the Budget Resources for the Governor's Office of
Minority Affairs

WHEREAS, the Governor's Commission on Minority Business Enterprise Reform was convened for a six-month period commencing on June 26, 2003, for the purpose of delivering an implementation plan for improving the effectiveness of the State of Maryland's MBE Participation Program; and

WHEREAS, this administration has publicly confirmed that this MBE reform effort is an important initiative and a top priority as part of a broader economic development strategy for the State of Maryland to ensure that all segments of its business community have a fair opportunity to compete and thrive in Maryland's marketplace; and

WHEREAS, a November 2002 report issued by the Office of Legislative Audits in the Maryland Department of Legislative Services severely criticized the integrity of MBE participation data submitted by State agencies for FY 2000 and FY 2001; and

WHEREAS, in the course of this audit State agencies were found to be grossly overstating the actual participation of MBE firms in State contracts by as much as 40%, and to be in non-compliance with MBE program requirements due to failures to monitor and verify actual MBE participation and payments, and to follow proper waiver procedures for MBE goals; and

WHEREAS, the very integrity of Maryland's MBE program is clearly at stake from the gross deficiencies in oversight of State agency program compliance; and

WHEREAS, the Governor's Office of Minority Affairs is the entity that has primary responsibility for compliance oversight and reporting functions related to the MBE Program; and

WHEREAS, no serious and legitimate effort at reform of the MBE program can possibly succeed absent the ability to truthfully and accurately measure results and to enforce compliance by State agencies; and

WHEREAS, the Governor's Office of Minority Affairs' dedicated staff consists of two full-time professional staff people; and

WHEREAS, the Governor's Office of Minority Affairs' current budget is a mere \$300,000; and

WHEREAS, these staffing and budget resources are inadequate for the magnitude of responsibilities assigned to the Governor's Office of Minority Affairs; and

WHEREAS, continuing to provide an inadequate budget and staff for this office would stifle any attempt at meaningful reform of the MBE program; and

WHEREAS, Maryland's budget process for FY 04 is already under way and will greatly affect the resources that are made available for implementation of any recommendations ultimately to be made by this Commission;

THEREFORE, WE, THE UNDERSIGNED MEMBERS OF THE COMMISSION ON MINORITY BUSINESS ENTERPRISE REFORM, DO HEREBY RESOLVE THE FOLLOWING:

OUR FIRST PRIORITY AS A COMMISSION IS TO RECOMMEND IN THE STRONGEST POSSIBLE TERMS TO THE GOVERNOR AND THE MARYLAND GENERAL ASSEMBLY THAT THE STAFFING AND BUDGET ALLOCATIONS FOR THE GOVERNOR'S OFFICE OF MINORITY AFFAIRS FOR THE NEXT FISCAL YEAR BE INCREASED SIGNIFICANTLY COMMENSURATE WITH ITS LEVEL OF RESPONSIBILITIES, AND COMMENSURATE WITH THE STATE OF MARYLAND'S STRONG COMMITMENT TO MEANINGFUL PARTICIPATION OF MINORITY BUSINESS ENTERPRISES IN OUR STATE'S ECONOMY.

[http://
www.gov.state.md.us/
executiveorders.asp#01.
01.203.16](http://www.gov.state.md.us/executiveorders.asp#01.01.203.16)





Not pictured: Senator Patrick J. Hogan, Brian Holmes, Senator Verna L. Jones, Delegate Michael Vaughn and Delegate Jill Carter

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